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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 300 Quarropas Street, Room 248

13 White Plains, NY 10601

14

15 July 6, 2023

16 12:14 PM

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21 B E F O R E :

22 HON SEAN LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ALIANNA PERSAUD

Page 2

1 HEARING re Omnibus Hearing

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3 HEARING re Doc. #467 Notice of Agenda

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5 HEARING re Doc. #449 Motion to Authorize/Debtor's Motion for
6 an Order (I) Establishing Claims Objection and Notice
7 Procedures (II) Establishing Claim Hearing Procedures and
8 (III) Granting Related Relief

9

10 HEARING re Doc. #289 Motion for Relief from the Automatic
11 Stay Re: FTX Trading

12

13 HEARING re Doc. #373 Motion to Authorize/Motion to Establish
14 Procedures and a Schedule for Estimating the Amount of the
15 FTX Debtors Claims Against the Debtors Under Bankruptcy Code
16 Sections 105(a) and 502(c) and Bankruptcy Rule 3018

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: All right, that concludes the 10
3 o'clock calendar. And now we will proceed belatedly to the
4 11 o'clock calendar and Genesis Global Holdco LLC and we
5 will start by getting appearances in that case. So let me
6 find out who's here on behalf of the debtors.

7 MS. VANLARE: Good afternoon, Your Honor, Jane
8 VanLare, Cleary Gottlieb Seen and Hamilton.

9 THE COURT: All right. Good morning. And on
10 behalf of the Official Committee of Unsecured Creditors?

11 MS. VANLARE: I'm so sorry, Your Honor. And with
12 me also is my partner, Luke Barefoot as well.

13 THE COURT: All right. Good morning to you both.
14 All right. On behalf of the Unsecured Committee? Anyone
15 here for the Committee of Unsecured Creditors?

16 MR. ABELSON: Yes, Your Honor. It's Phil Abelson
17 White and Case on behalf of the UCC. My colleague,
18 Christopher Shore, should be joining me in a moment. I
19 presume he just walked away while the other hearing was
20 going on. I will make sure he rejoins. Thank you, Your
21 Honor.

22 THE COURT: All right. That's fine. I can
23 completely understand. And so on behalf of Gemini Trust
24 Company?

25 MR. MARGOLIN: Good morning, Your Honor. Jeffrey

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1 Margolin, Hughes Hubbard and Reed. I'm joined by my
2 colleague, Anson Frelinghuysen.

3 THE COURT: All right. On behalf of the Ad Hoc
4 Group of Genesis customers?

5 MR. SAZANT: Good afternoon, Your Honor, Jordan
6 Sazant, Proskauer Rose, LLP, on behalf of the Ad Hoc Group.

7 THE COURT: On behalf of the Digital Currency
8 Group?

9 MR. SIDDIQUI: Good morning, Your Honor. It's
10 Furqaan Siddiqui of Weil Gotshal and Manges on behalf of the
11 Digital Currency Group.

12 THE COURT: All right. On behalf of FTX Trading
13 Limited and its affiliated debtors.

14 MR. DIETDERICH: Hello, Your Honor, Andy
15 Dietderich, Brian Gluckstein and Ben Beller, Sullivan and
16 Cromwell with the FTX debtors.

17 THE COURT: All right, I believe. Good morning.
18 I think we also have the committee from that case here.

19 MR. PASQUALE: Yes, Your Honor. Ken Pasquale from
20 Paul Hastings for the Creditors Committee in the FTX cases.

21 THE COURT: All right. And there are a number of
22 other appearances from folks, but at this point, again, no
23 slight intended, I will cut to the chase and ask if there's
24 anybody else who needs to make an appearance in this case,
25 who has not yet done so?

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1 MR. SHORE: Your Honor, it's Chris Shore from
2 White and Case. I was just slow on the trigger. I'll be
3 appearing on behalf of the Official Committee.

4 THE COURT: All right, good to have you here.
5 Anyone else?

6 MR. ZIPES: Your Honor, Greg Zipes with the US
7 Trustee's Office. I may have some comments at the end at
8 the end of the case.

9 THE COURT: All right. Thank you very much.
10 Anyone else?

11 All right. So first let me thank you all for your
12 patience. You never know in this job, no matter how many
13 years you've been on the bench, exactly how long something
14 is going to take. And this morning is a perfect example of
15 that. I appreciate everybody's patience. And so I do have
16 the amended agenda for the hearing at Docket 481 and
17 identifies three items that are on for today, two of which
18 are sort of a sequel of earlier events in the case. And so
19 with that, I'll turn it over to debtor's counsel if there's
20 any sort of initial status issues to discuss on the case and
21 then to walk us through the agenda.

22 MS. VANLARE: Thank you, Your Honor. I think we'd
23 like to proceed in the order of the amended agenda. So
24 start with the claims procedures motion and then proceed to
25 the motion to lift stay and the estimation motion with

1 respect to the FTX claims.

2 THE COURT: All right.

3 MS. VANLARE: With that (indiscernible) for the
4 claims objection motion.

5 THE COURT: All right. Mr. Barefoot.

6 MR. BAREFOOT: Good morning, Your Honor. For the
7 record, Luke Barefoot from Cleary Gottlieb Steen and
8 Hamilton for the Genesis debtors in possession. Your Honor,
9 turning to the first agenda item, Agenda Item Number 1,
10 fortunately, the only uncontested matter we have today, I'm
11 pleased to report, that's Docket Number 499, the debtors
12 motion to establish omnibus procedures for claims
13 objections. There was a revised proposed order that was
14 filed on Friday at Docket Item 465. Does Your Honor have
15 that order in front of you?

16 THE COURT: I do, I do.

17 MR. BAREFOOT: Very good. So I will turn to walk
18 through some of the changes on that order, but just by way
19 of brief background, you know, it's been just over
20 approximately a month since the debtor's bar date has
21 passed. The results of that bar date were approximately 750
22 claims asserted with an aggregate asserted value of nearly
23 \$9 billion. The debtors with their financial advisor at
24 Alvarez and Marsal, since that time, have turned in earnest
25 to right sizing and analyzing the debtor's claims base, not

1 only ultimately to ensure that they're not duplicative or
2 inappropriate recoveries, but with the debtor solicitation
3 processes about to come up in the approaching weeks to
4 ensure that there's no unnecessary noise in the voting pool,
5 particularly from duplicate claims.

6 Your Honor may recall that as part of the bar date
7 motion, there was a very elaborate process with respect to
8 Gemini and Gemini-earned users. Gemini did, pursuant to the
9 bar date order, file a master proof of claim on behalf of
10 the Gemini-earned claimants, but nonetheless, the debtors
11 and their professionals' preliminary analysis indicates
12 nonetheless that hundreds of individual Gemini-earned
13 participants filed claims that appear to be duplicate in
14 whole or in part.

15 And so to that end, the motion attaches not only
16 kind of the standard form of notice that claimants who were
17 subject to a claims objection would receive but customized
18 forms of notice for Gemini-earned claimants whose claims are
19 either in whole or in part duplicative of the Gemini master
20 group of claims.

21 There were no objections filed to the motion, Your
22 Honor. We did have a number of productive discussions and
23 informal comments both from Gemini, from the UCC, and
24 counsel for the joint liquidators for Three Arrows Capital.

25 So with that background and context, unless Your

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1 Honor has any specific questions, I would just propose to
2 walk through the blackline that was filed as Exhibit 2 to
3 Docket Item 465.

4 THE COURT: All right. Let's walk through the
5 changes, please.

6 MR. BAREFOOT: Terrific. Thank you, Your Honor.
7 So the first change appears in Paragraph 1-F. And this is
8 really a clarification that nothing in this order revises
9 the burden of proof. Three Arrows and its liquidators
10 obviously have one of the largest asserted claims. So the
11 parties here are really building in and channeling a mutual
12 ability to consult, to modify on notice to the committee the
13 potential procedures set forth in these objections -- in
14 these objections procedures, and in the event that we're
15 unable to agree to do so, to take the issue up with Your
16 Honor.

17 THE COURT: All right. And I did have a sort of a
18 related comment when you're talking about the burden of
19 proof. I did see there's language talking about the legal
20 standard for a non-evidentiary hearing as the equivalence of
21 a standard motion to dismiss and all that's fine. I totally
22 understand why you have that in there in terms of it being
23 informative. Nonetheless, I would, I would urge that it
24 come out just because the applicable legal standard is the
25 applicable legal standard. I appreciate why you have it in

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1 there because I think it's, it's helpful in terms of people
2 understanding what you're trying to accomplish. But at the
3 same time, I think it goes to your point of saying the
4 applicable, applicable -- the rules of the road that apply,
5 apply. And so -- and I don't think there's any intent to
6 change those. So I think you always, people always get a
7 little bit nervous if some particular thing is called out
8 and something else isn't called out or does this change what
9 the standard of review is? And so I, again, I understand
10 exactly why it's in there because it's helpful in terms of
11 explaining what the intentions are and what those kinds of
12 non-evidentiary hearings would look like. So I'm taking it
13 for that purpose, but I think for purposes of the order, I
14 would just take that out because the applicable legal
15 standard is the applicable legal standard.

16 MR. BAREFOOT: Understood, Your Honor. Do you
17 have, just in terms of implementing what Your Honor just
18 said, do you have an issue with proceeding kind of in two
19 tracks with a sufficiency hearing which we think, you know,
20 it's sort of in accordance with the local rules where the
21 first hearing, unless ordered otherwise, is not an
22 evidentiary.

23 THE COURT: No, that's correct.

24 MR. BAREFOOT: Do you?

25 THE COURT: No, I think you have it right. I

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1 don't have a problem with the way you've set it up, which is
2 that the, an evidentiary hearing will be -- the rules and
3 procedures for that will be set forth in the scheduling
4 order. That is, we'll make sure that anybody, we're going
5 to have an evidential hearing, everybody is on notice. The
6 rules and procedures will be in there. And that for claims
7 objections, generally, the first hearing is non-evidentiary.
8 And again, I took your comment to be helpful in the sense of
9 giving me a window into how you're thinking of the process
10 and what can be accomplished and I appreciate that because
11 one of the things that always I think comes to the minds of
12 judges when they get these kinds of motions is we understand
13 what you, what you, why we get these motions. And the
14 answer is how do we give you what you want without giving
15 you a blank check or totally rewriting the rule that
16 Congress in its wisdom has decided to provide us with?

17 So it is a very helpful comment and I took it in
18 that in that vein so that I understand what it is, how you
19 see the process working.

20 MR. BAREFOOT: And we obviously did cite in our
21 motion, Your Honor, support for various courts that have
22 applied effectively a 12(b) (6) standard to certain very bare
23 bones proofs of claim. But just in terms of understanding
24 how to implement Your Honor's point, if we can preserve the
25 distinction between the sufficiency hearing and the merits,

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1 evidentiary hearing --

2 THE COURT: We can do that. I think, I think my
3 comment is fairly narrow. So if you go to -- and I happen
4 to have a tabbed on the original proposed order, so my
5 apologies. If would you go to Paragraph 2 --

6 MR. BAREFOOT: 2-A?

7 THE COURT: 2-A and you just take out that last
8 sentence. So everything else should remain about the non-
9 evidentiary hearing and pursuant to Bankruptcy Rule 7012.
10 And it just again, I understand why it's included. And I
11 think it's helpful to give me an idea of, of what you want
12 to do. But I think to the extent one might argue that it's
13 a legal determination, we just don't want to have to go down
14 that road. So if you just take out that last sentence and
15 leave everything else in, I think it functions the same way
16 as you intend.

17 MR. BAREFOOT: Understood, Your Honor. And the
18 debtors, just for the avoidance of doubt would, would
19 reserve the right to argue that Rule 7012 should,
20 nonetheless, apply to any particular claim.

21 THE COURT: Yes, absolutely, absolutely.

22 MR. BAREFOOT: Okay, very good. That's, that
23 was, that was very helpful colloquy, Your Honor. If I could
24 then just carry back where we were?

25 THE COURT: Please.

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1 MR. BAREFOOT: Okay. So the next change is in
2 Paragraph 1, I'm sorry, these nested, nested objections. I
3 think it's 1-F romanette II, the language that begins "With
4 respect to each omnibus objection service of the omnibus
5 objection."

6 THE COURT: Yes, got it.

7 MR. BAREFOOT: So there's just a parenthetical
8 there that clarifies that the omnibus objections may be
9 filed without exhibits where necessary to comply with
10 sealing requirements.

11 THE COURT: That seems entirely appropriate.

12 MR. BAREFOOT: Okay. And then in that same page,
13 Paragraph J, this is really again in the nature of a
14 clarification because the forms of exhibits that we very
15 carefully crafted, with the assistance of Mr. Margolin at
16 Hughes Hubbard, really are for Gemini lenders' claims that
17 relate to Gemini borrowings. In the event that there are
18 other types of Gemini lender claims, obviously, those
19 customized notices don't make sense. So just a
20 clarification that, that we will serve those omnibus
21 notices, not only when the objection is to a Gemini lender's
22 claim, but when that claim is based on Gemini borrowings.

23 THE COURT: All right. I'm fine with that. On a
24 related thing when we're looking at J, there is a reference
25 here about the debtors are authorized to extend any response

1 period in sole discretion without notice to the Court.
2 Please do it on notice to the Court because otherwise, we
3 just have no idea how to most effectively run the railroad.
4 So what I would say is just follow what you have normally
5 done, which is reach out to chambers and say this is fine.
6 Pretty much the inevitable answer will be yes and that's
7 perfectly fine. But it allows us to keep track of what's
8 moving forward and what isn't and what it looks like,
9 especially with larger claims objections when that kind of
10 stop, go, traffic cop role becomes more important. So I
11 would actually just tweak that to just say, you know, the
12 court -- a request is made to the Court. And you can do it
13 informally as you've done in the past with other extensions
14 of deadlines. That's fine. I'll leave it to you to craft
15 appropriate language to memorialize that. And I think
16 frankly, the only time I think I've ever pushed back on
17 extensions of time, because we don't normally do so because
18 we understand people are often trying to resolve issues and,
19 and want to give the max amount of time, is if for some
20 reason I feel like I'm not going to get enough chance to
21 look at the final, completed briefing. So that's often just
22 the very tail end of things. But again, as long as you keep
23 us in the loop, it's fine.

24 MR. BAREFOOT: And, Your Honor, just as a point of
25 clarification. I think that's Paragraph K in the blackline,

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1 not J, right?

2 THE COURT: Oh, yeah, I'm sorry, I'm going, I made
3 my notes on the original one.

4 MR. BAREFOOT: No problem. We just wanted to make
5 sure we were on the same page.

6 THE COURT: Yes, you're entirely right.

7 MR. BAREFOOT: Okay. So it's just that last
8 sentence --

9 THE COURT: Correct.

10 MR. BAREFOOT: Okay. I've got it. And then last,
11 but not least, this is not a modification to the form of
12 order but rather a representation that we have agreed to
13 make on the record, in order to reflect discussions we've
14 had with Mr. Abelson on behalf of the UCC, you'll see that
15 in Paragraph 4, the second sentence reads "That the debtors
16 may, in their discretion and in accordance with other orders
17 of this Court or provisions of the code and the rules,
18 settle the amount, priority, and validity of such contested
19 claims without any further notice to, or action order, or
20 approval of the Court. Obviously, it was not ever our
21 intention to use this for extremely material claims where we
22 believe we would -- it would behoove us and behoove the
23 creditor body to likely seek approval of any such settlement
24 under Rule 9019. But if by contrast, we filed an objection
25 and said we want to reduce and allow the claim to \$5000, it

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1 turned out after reconciliation, it was \$525, you know, the
2 cost of doing a revised proposed order or a 9019 motion just
3 doesn't make sense there.

4 THE COURT: All right, that's fine. And I assume
5 that there would no doubt be consultation with the committee
6 on things that were material.

7 MR. BAREFOOT: And let me just, just let me read
8 into the, into the record, the representation that we've
9 made that will resolve the UCC concern on this. On that
10 point, the debtors represent on the record that the debtors
11 will provide advanced notice to counsel to the committee for
12 any such claims that they would seek to settle pursuant to
13 the authority in this Paragraph 4. And that in any event,
14 they would not seek to use the authority for any claims
15 asserted at or proposed to be settled in excess of \$10
16 million.

17 THE COURT: All right. Thank you very much. Any
18 other changes to the order that we should walk through?

19 MR. BAREFOOT: No. Mr. Abelson, maybe you can
20 just confirm that resolves our concern on this front?

21 MR. ABELSON: It does, along with your other
22 statements on the record. I do appreciate it, Mr. Barefoot.
23 Thank you.

24 MR. BAREFOOT: Very good. So, Your Honor, it
25 sounds like we have just a handful of changes to make. We

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1 will do that expeditiously. And unless Your Honor has any
2 other questions, we will submit a proposed order.

3 THE COURT: All right. Any party wish to be heard
4 on this motion, establishing claims objection notice
5 procedures?

6 All right. I'm happy to grant the motion. My
7 only other comments are sort of rather than put them in an
8 order, I would also just state them on the record with the
9 flexibility that entails, is obviously by getting its
10 discretion, I would ask you to use it wisely in the sense of
11 having -- this is often, this kind of relief is often
12 requested so that people can list a larger number of claims
13 where you're asserting a particular ground and there are
14 many different claimants. And it obviously works less well
15 when it becomes a very disparate, here's 12 different
16 grounds and many different claims, because it becomes
17 confusing to claimants, many of whom may be pro se, but it
18 also becomes very unmanageable from a traffic cop where
19 we're on Objection Number 37, Omnibus Objection 37.

20 So I'd ask to just exercise your best discretion
21 to, to make it as efficient as possible. This is designed
22 to be efficient. So if it's, if it's done properly, it can
23 be more efficient and appropriate, but just to not make
24 claims objections too unwieldy by either, particularly with
25 multiple grounds. And again, a good test is whether you

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1 really think somebody who is not represented by a lawyer,
2 who's looking at it, can follow what's going on. If we all
3 do that, that tends to end up with a good result for
4 all involved. But again, I've seen this used very
5 effectively and I think by your firm, in fact. And so I
6 have no doubt that it'll be beneficial and efficient here.

7 MR. BAREFOOT: We appreciate that, Your Honor.
8 And partly for that reason, we did not seek to vary the 100
9 maximum omnibus standard rule in 3007 because we do intend
10 to try to keep, as you said, like with like to avoid
11 unnecessary confusion.

12 THE COURT: All right. Thank you. That's helpful
13 to know. And so that's my only comment and with that, I'm
14 happy to approve the motion as has been amended here on the
15 record and over time in the revised proposed order as
16 appropriate under the facts and circumstances of the case
17 and applicable law. And I appreciate everybody's comments
18 and thoughts on the subject. And it looks like a good
19 outcome. So thank you, Mr. Barefoot. And with that, I
20 think we can move on to the next matter.

21 MR. BAREFOOT: Thank you, Your Honor.

22 MS. VANLARE: Thank you, Your Honor. Next, we
23 have the two FTX-related motions. We have the FTX motion to
24 lift the automatic stay and the debtor's motion to estimate
25 the FTX estimation claims. As, as you call, Your Honor, we

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1 did have a hearing on these two motions a few weeks ago. At
2 the conclusion of that hearing, Your Honor ordered us to
3 commence discovery and engage in meet and confers. We've
4 done that. So what I'd like to do is begin with some
5 context again for these two motions and then really focus on
6 telling Your Honor what we've done to date and how we
7 propose to go forward.

8 THE COURT: All right. I will say based on what
9 I've seen, I still see a significant amount of parties
10 talking past each other a bit on this. And let me, so let
11 me start by sharing a couple of thoughts. I think two of
12 the themes, if you want to characterize it that way, that I
13 have in terms of my concerns is one, I think for estimation,
14 there's a certain amount of devil in the details. I do see
15 the revised schedule and I did see some of the sort of --
16 there was an attachment to the letter that was filed by FTX
17 counsel that sort of sets forth some of the thinking about
18 what people were -- what issues were going to go forward.
19 And that's all helpful. But again, to assess the benefits
20 of estimation, which I think is part and parcel of an
21 approval of estimation, is somewhat of a comparative notion,
22 right? So we think about one, Why is it necessary? And
23 two, Is it actually of benefit? What's the alternative?
24 And so having a sense of what the procedure actually looks
25 like is, is an important part of me approving a procedure.

1 And so I see there's additional deadlines which,
2 which lay out some of that. And again, I'm sure you've been
3 talking about what does it look like. And so -- but another
4 way to think about it, I guess, is to what kind of procedure
5 are we having? Is it, is it, is it after the, after
6 briefing? Is it, is it a, is it an evident hearing that
7 lasts one day, two days, three days, a week? I remember a
8 number of years ago, probably a decade ago, there was a
9 standing to sue hearing that wasn't on the merits of the
10 actual claim but was on standing and I think it lasted, one
11 judge had it, and I think it lasted a week or two.

12 And so the devil is in the details in terms of
13 what it looks like. So that's one, one thing that I'm sure
14 you've made progress. I can see some evidence of the
15 progress in terms of the procedures. But I think there's
16 probably a little more ways to go. And the second is that
17 when we talk about issues to estimate -- and that's where
18 the FTX motion to lift the day is grounded. And again, I
19 think as I said before, my concern, it's always a
20 challenging to rule on the abstract and that means ruling in
21 advance as we don't know how cases unfold, can be difficult,
22 whether it's what are the actual deadlines in the case as
23 opposed to what are the deadlines on paper versus, in this
24 case, what's going on in the FTX bankruptcy?

25 But that's a prelude to the notion that there are

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1 specific issues that I think are going to be discussed. And
2 when I saw the revised order, it essentially, I took it as
3 a, as a gigantic reservation of rights in terms of the new,
4 new paragraph, I guess it's 3 that lays out, here are the
5 things that we might, we might include. And it says, "may
6 assert any and all defenses including," and so, so I guess
7 I'm just trying to get a little more understanding.

8 So to whether the parties have an agreement on
9 this, whether this is something that's being floated by the
10 debtors, because this talks about the debtors may assert any
11 all defenses availed to them in the estimation schedules
12 that were shared except the value of FTT and the insolvency
13 of the FTX debtors. And I understand that to be addressing
14 Mr. Dietderich's question. So I guess my question for you
15 is, Is this something that's been agreed to in the sense of
16 it either can be, I don't understand that the parties have
17 reached an entire agreement, but it may be you've reached an
18 agreement on this limited, albeit very important, issue in
19 the sense of that constitutes progress.

20 So I wasn't quite sure how to read that, Ms.
21 VanLare. Maybe, maybe that's worth diving into from the
22 get-go, how I'm supposed to understand the language of the
23 revised order?

24 MS. VANLARE: Yes, Your Honor. Thank you. That's
25 very helpful and I'm happy to address all of those issues.

1 So the proposed revised order, it has not been agreed to by
2 the FTX debtors. I do want to be clear about that. I do
3 think we've made substantial progress and I'd like to tell
4 you about some of that. But, but I do think that the, what
5 the revised order does is it does, I think, further
6 streamline the estimation proceeding. And I'd like to
7 describe to you how we believe that it does that.

8 So I'll just begin, and let me know if I haven't,
9 I haven't addressed all of your questions. So in terms of
10 the estimation, we have had multiple meet and confers since
11 the last hearing with the FTX debtors. We think they've
12 been very productive. We have exchanged discovery requests.
13 The debtors have either made already or will shortly make
14 today a substantial production relating to ordinary course
15 of business issues, which was, which is responsive to some
16 of the discovery that have been served.

17 In terms of where we are, I think we are very,
18 we're quite close to an agreement as to the -- what I would
19 call sort of the basic facts of the transfers at issue,
20 which include the parties, the amounts, the dates. I can't
21 say we're, we're there, but I think what we've heard from,
22 from the FTX debtors is I think we're close. And again, I
23 think we've been proceeding very productively on that front
24 and I do think we can get there relatively quickly.

25 I think where that leaves us then is, to Your

1 Honor, one of Your Honor's questions -- is what are the
2 issues? And what we proposed and what we've sought to do in
3 the revised order is to say that the estimation proceeding
4 will be conducted in a -- on account of the defenses and the
5 arguments that we can make on the basis of that sort of the,
6 the basic transfer information, the transfers themselves, as
7 well as some of the defenses that do require factual
8 testimony, but it's rather limited. It's the ordinary
9 course of business defense which, you know, I think we've
10 talked about last, at the last hearing, and which we've told
11 the FTX debtors, as part of our meet and confers, that we
12 intend to assert. That does require factual and expert
13 discovery. As I mentioned, I think we're well underway with
14 respect to that discovery.

15 And the safe harbor defense, which we said will
16 require expert testimony, beyond that, Your Honor, the
17 remaining issues are really legal in nature or they rely on
18 facts that we think we will be in a position to stipulate to
19 with the FTX debtors. What we have said, we have told the
20 FTX debtors, and based in part on what they said at the
21 prior hearing, is that there are certain issues that they
22 find particularly involved and difficult and time intensive,
23 which we don't disagree with. They include the issue of
24 whether FTX was insolvent at the time of the transfers.
25 They had mentioned the, the valuation of FTT tokens and

1 whether or not withdrawals from FTX dot com constituted
2 property of the estate.

3 So what we've done is essentially, taken those
4 three issues and I'll explain how, out of the estimation
5 proceeding on this current timeline. We do fully reserve
6 our rights to pursue them, but what we've said is Your Honor
7 can estimate and can reach a reasonable basis to estimate
8 without considering those issues on the timeline that we've
9 asserted, which is consistent with our confirmation
10 timeline. And again, I underline the reason for the
11 timeline that we've proposed is we would like, and we need
12 these claims to be estimated in advance of confirmation.

13 So in terms of the, what this issue, whether or
14 not deposits of customer property where, where
15 (indiscernible). During the meet and confers and as to the
16 letter that FTX filed yesterday, what they've indicated to
17 us and I believe, you know, on the record, is that they are
18 planning to withdraw the portion of their claim asserted
19 against the debtors that relate to the relationship between
20 GGCI, which is a non-debtor, and FTX dot com.

21 So, Your Honor here, basically, we have two sets
22 of transactions. We have transactions between GGC and
23 Alameda. Those are -- those constitute a portion of the FTX
24 claims that have been asserted against GGC and other
25 debtors. And there are, there are some portion of their

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1 claims that relates to transactions with FTX dot com. GGCI
2 was the entity that transacted with FTX dot com, rather than
3 GGC. So to the extent the FTX debtors withdraw the claims -
4 - again, they've, they've indicated they will do so -- that
5 basically takes the issue of property of the estate out of
6 the estimation proceeding because those will be claims that
7 may or may not be asserted against GGCI.

8 In terms of the issue of valuation of FTT, we have
9 said in the proposed order -- and proposed that -- again,
10 this goes part and parcel with the fact that we anticipate
11 that the FTX debtors will withdraw FTX dot com related
12 claims from the claims they have asserted against the
13 debtors. The debtors will not be asserting, again, as part
14 of the estimation proceeding, a defense that essentially the
15 value FTT withdrawn was lower than the market value. We
16 reserved all our rights on that issue, but that is not going
17 to be part of the estimation proceeding.

18 And then finally, as I mentioned earlier, the
19 issue of FTX's insolvency, which is obviously one that is
20 complicated, will take a long time to litigate. We've also
21 said we think that there is enough here for Your Honor to
22 reach a reasoned basis to estimate these claims without
23 getting to that issue. We have a number of defenses. And,
24 in fact, we may never need to reach that issue.

25 So what we're trying to do is to streamline, to

1 further focus on what we think will be the issues that may
2 be determinative, frankly and that can be dealt with on the
3 timeline for estimation that we've proposed.

4 THE COURT: All right. So let me ask, with that
5 backdrop, what does that mean from the debtor's point of
6 view as to the stay relief motion? Because obviously,
7 there's an intent, or as a practical matter, the results of
8 identifying things that are going to be litigated here and
9 things that aren't going to be litigated here, some of which
10 were obviously prominently mentioned by Mr. Dietderich the
11 last time we got together as things of particular concern.
12 So where would that leave the debtors in terms of their
13 views about the lift stay motion?

14 MS. VANLARE: Yes. Your Honor, We think that
15 they, they have not met their burden to lift the stay. I'm
16 happy to go through the legal basis, but I think we went
17 through it last time. I think the Sonnax factors are very
18 clear. I think that if you look at the great majority of
19 them weigh against lifting the stay. The only one the FTX
20 debtors have really mentioned and relied on is sort of
21 balance of the harms which, you know, at best is, you know,
22 again, could argue that they have harms, we have harms, but
23 that's one factor. So I think as a legal matter, they have
24 not met their burden under the law and under the standard
25 that's been articulated in the Second Circuit.

1 But again, I think -- so what we would propose to
2 do is we would ask Your Honor to proceed with estimation
3 that's consistent with the confirmation timeline. We think
4 that not doing so will cause undue delay. For the reasons
5 we articulated at the last hearing, it'll cause a delay,
6 undue delay in distributions and it will, as Your Honor
7 knows, we have a mediation process that's ongoing. We're
8 still trying to get to a consensual resolution. We're not
9 there yet. We think -- and our credits have made it clear
10 that not estimating these claims will not allow for a
11 consensual resolution of these cases. So in order --

12 THE COURT: So let me ask. The letter that I
13 received yesterday lays out some of the progress that the
14 parties have made, particularly as to the size of a claim,
15 the size of the claim, as well as proportional share in
16 terms of what kind of reserve we're looking at, that it's an
17 unsecured reserve. It's not -- it doesn't stand in the way
18 of a priority reserve, I guess is the way to say it, and
19 that things like stipulating that no more than 30 percent of
20 the unsecured claims pool -- and obviously, I will hear from
21 FTX in a little bit, but as I understand the letter and its
22 bullet points, I think the -- it seems like the intent is to
23 explain how this won't hold up distributions or won't
24 interfere with the plan. And so towards the end of his --
25 Mr. Gluckstein's letter, he asks that the FTX debtors get an

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1 opportunity to submit additional briefing in light of these
2 developments. And so I guess two questions then is, I don't
3 know if you have anything to address the substantive points.
4 And two is what you thought about his request for additional
5 briefing to address the -- what I think FTX would say is the
6 changed facts on the ground?

7 MS. VANLARE: Your Honor. I don't think that
8 there are really changed facts on the ground. I do not
9 think we need additional briefing. I do think that I'd like
10 to address the 30 percent claims pool. First, I'll just
11 note that we did find it very troubling that the letter was
12 filed yesterday, attaching a 408 document. So I'll just
13 note that, that we find that inconsistent with the spirit
14 with which we've engaged in meet and confers. But putting
15 that aside, we think the 30 percent claims pool is, is
16 extremely large and not workable in the context of a plan.
17 30 percent of the scheduled claims, which are approximately
18 \$4 billion, would be essentially virtually all of the
19 debtor's liquid assets if you look at the most recent coin
20 and tax report that we filed. That would mean that
21 essentially virtually all, if not all depending on
22 administrative and priority claims, of liquid assets would
23 be held up by virtue of this kind of reserve. That is the
24 definition of undue delay.

25 THE COURT: And that's because, that's because

1 it's based on claims filed as opposed to existing, the
2 assets that actually exist.

3 MS. VANLARE: That is how we understand the
4 letter, correct, Your Honor.

5 THE COURT: So, but let me ask -- and this sort of
6 ties into this notion, talking about you've invoked the time
7 frame for the case and confirmation including distribution
8 several times. But I understand, and I saw the further --
9 the notice of further extension of the mediation period and
10 that's fine and great and mediation is commonly used in
11 cases as a way to try to efficiently resolve issues. But I
12 guess my thought is that it's always difficult for parties
13 to fight in the abstract. And so as I understand, the
14 mediation is a significant event in trying to determine the
15 available, available -- the amounts available for
16 distribution. And therefore, put more specific, a more
17 specific point on all of our much more theoretical
18 discussions. So I am curious what the parties -- I don't
19 expect you to have a time frame for the mediation. That's
20 not how those things work. But in terms of thinking about
21 how to reconcile various competing interests, do you think
22 that if the mediation is successfully concluded that that
23 may make it easier for the parties to reach some sort of
24 practical accommodations as to what, what goes ahead, what
25 case and how and how to essentially have the cases not

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1 impact each other? So you mentioned the claims pool and I
2 get it, but if no one can really talk about the amounts
3 available for distribution while the mediation is pending,
4 and so I'm wondering if the mediation might unlock an
5 ability to -- for the parties to more easily reach some kind
6 of accommodation on these specific issues?

7 MS. VANLARE: Your Honor, it's hard to predict the
8 outcome of mediation. But again, I note that again, the
9 (indiscernible) of these claims is extremely high and there
10 are a few other issues I'd just like to note. One is that,
11 you know, under, under the plan that we filed, we are
12 seeking to make in kind distributions. So having a
13 significant reserve has other repercussions that are very
14 challenging for us in the context of the plan. I think --

15 THE COURT: I understand all that. So I
16 understand how from the point of view, if you start doing
17 the math from the amount of claims, things tilt. It just
18 doesn't, it just doesn't work. But my thought is if there's
19 a -- the things haven't stopped moving yet on what assets
20 may be available for distribution in the plan. And if
21 there's more clarity on that front, I wonder if it allows
22 parties to have more practical negotiations about what, what
23 something might look like in terms of a reserve because it
24 wouldn't be based on claims. It would be based on available
25 assets perhaps. I don't know. I'm just spit-balling here.

1 I'm not in the room where this is all happening. So I don't
2 know, but I know that it puts people in a very difficult
3 position to argue about their theoretical rights when
4 there's too many variables that could impact what it
5 actually means for folks. And you have to protect against
6 all possible outcomes. And so I'm just trying to see if
7 there's anything that may -- other ways to look at this that
8 may unlock some common ground.

9 MS. VANLARE: So I think, Your Honor, more time
10 obviously is more information. I think what's important to
11 us is that again, we have a process in place that serves as
12 a backdrop. We've tried very hard to streamline it. We've
13 tried to be cognizant of some of the issues the FTX debtors
14 had raised. You know, some of the -- we're talking about
15 balance of harm, some of the issues that were important to
16 them. We've tried to do that in the process. I think
17 again, what's key to us is that we continue, discovery
18 continues, that we have sort of schedule that we can fall
19 back on. We can obviously continue talking to the FTX
20 debtors and thinking about other resolutions. But it's very
21 important for us to maintain this timeline so that we can
22 estimate these claims.

23 THE COURT: I understand the case needs to move
24 forward. The specific timeline is less clear to me because
25 I think it's just less clear. But again, cases don't move

1 forward unless you move them forward. So your point is well
2 taken on that. But I guess part of it goes to the fact that
3 it sounds like there's been a willingness to break out the
4 issues of the value of FTT and the solvency or insolvency of
5 any or all of the FTX debtors. But that thinking along that
6 score stops short of any willingness to lift the automatic
7 stay to address those kinds of issues in the FTX bankruptcy.
8 I don't know if they're -- frankly, if they're amenable to
9 be parsed out that way. And so I'm just sort of probing and
10 trying to look at the Rubik's Cube from different angles to
11 get a sense, a sense of things that if there's anything that
12 would essentially as you wish to move forward your case,
13 whether the debtors and FTX are able to move forward with
14 their case, at least on those issues. And maybe this is a
15 question better for Mr. Dietderich and his team, including
16 Mr. Gluckstein, but I certainly wanted to get your thoughts
17 on that.

18 MS. VANLARE: Your Honor if I may make just one
19 more point before you turn it over to Mr. Dietderich and his
20 team? But in terms of the alternative, because that was one
21 of the things you had raised, the alternative to estimation.
22 We are concerned that the alternative would take
23 substantially longer. We think, you know, the letter that
24 was filed yesterday proposes a six month litigation. That
25 obviously is not guaranteed. We think that, you know, if we

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1 were to include all of the issues that, again, we tried to
2 streamline or try to take off the table for purposes of the
3 schedule, if you were to include all of that, it is likely
4 to take substantially longer. So I do think, Your Honor,
5 that there is information in the record as to what the
6 alternative would look like. And again, it really is
7 untenable given our, our estates and the administration of
8 our claims.

9 THE COURT: Well, I would appreciate a thought as
10 to what -- so I took the order to be we're carving out these
11 issues. And then I took the chart attached to the letter to
12 be essentially a rough identification from FTX's point of
13 view, not your point of view necessarily that, that this is,
14 that these are the other issues other than the two that
15 you've carved out, which is the value of FTT and the
16 solvency or insolvency of the FTX debtors. And so -- and I
17 understand and I'm sorry that this is so much prologue
18 before the question. And I understand the timeline means
19 that the debtor's brief on estimation comes first. You
20 propose that to be August 7th. So that puts the marker down
21 to say here's what it is that frames the proceeding we're
22 going to have. These are the issues that we are going to
23 essentially object to and we want to address the estimation
24 proceeding. And so my question is this, Is the thought that
25 it's premature until that brief is filed to talk about what

1 the actual process looks like, whether it's a three-day
2 hearing, a one-day hearing, a two-day hearing, a 10-day
3 hearing, how many witnesses, what witnesses and that you
4 can't do that until you reach that point and you complete
5 discovery? And so essentially, this is a partial schedule
6 leading through essentially briefing, but not necessarily
7 the actual estimation procedure that would appear in court
8 in front of me. Is that, is that how I understand it?

9 MS. VANLARE: I think we'd be open. I mean, we
10 circulated this order to FTX debtors that are not engaged on
11 the on the schedule. I think from our perspective, I don't
12 see this as a 10-day hearing. As I mentioned, the issues
13 that are left just basically involve two expert witnesses
14 and factual discovery. So whether it's one day or two days,
15 you know, I would, I think we may wait to decide that, but
16 that's the rough timeline.

17 THE COURT: I guess the problem is I can't see
18 what, so what I have in front of me is sort of -- is an
19 incomplete picture. So I have what's carved out and that's
20 of value, right? That's of significance. And then I have
21 the schedule, but I'm sort of left to kind of guess when you
22 say, oh, it's really only two, two experts and sort of
23 agreed upon facts. I can't divine that from what I have.
24 And so I guess my thought is it would be helpful to actually
25 see it affirmatively stated that this is the intent is to

1 litigate. So that's why I keep making reference to that
2 chart that sort of says, well, here are some of the, here
3 are some of the issues, a new value, ordinary course,
4 collateralization, safe harbor. I don't, I don't have
5 something that essentially says for purposes of this, Judge,
6 here's what we think this actually looks like. That chart
7 wasn't for you. It was in the context of negotiations. I
8 get it. So I don't feel free to divine anything from it
9 because you didn't offer it to me. And so I guess my
10 thought is it would be helpful to have, from your point of
11 view, what you actually think the estimation hearing would
12 look like in terms of issues and witnesses because it allows
13 me to sort of get a handle on things. Because what we're
14 doing, as I understand it, is saying, Judge, we think you
15 can estimate some things without some of these other issues.
16 And here are the issues we want you to look at.

17 And so that's fine. But again, I think the only
18 thing I have really is that the universe of the issues you
19 want me to look at are everything other than the value of
20 FTT and the solvency or insolvency of the debtors. I
21 suspect the truth is not quite that. It's something
22 different. And so I'd be interested in sort of an
23 affirmative statement of what you intend to do or maybe
24 something in the schedule that says here's the date by which
25 the debtors are going to come forward and identify the

1 issues that they wish to address in the estimation hearing
2 and what witnesses they think they would offer on that
3 issue. So it might be -- that's why I asked before. I
4 wasn't sure if the schedule was essentially, here's the
5 schedule idea we have thus far. We know there are other
6 steps along the way. And so that's why I was wondering
7 whether the submission of the debtor's brief is essentially
8 that kind of we're declaring what it is that the estimation
9 hearing would cover. So sorry, that's a very long question,
10 but I'm just trying to sketch it out so you could at least
11 see what I'm thinking.

12 MS. VANLARE: Yes, Your Honor. And I think I'm
13 happy to do that. And essentially, the chart that was
14 attached, I mean, that was our attempt in trying to be as
15 constructive as we could with the FTX debtors. We don't
16 want to surprise anyone and we understand that in trying to,
17 to figure out a schedule that works, people need to know
18 what the issues are. And so I think I'm happy to articulate
19 those. I think our intent is to argue the collateralization
20 and under 547(b)(5), as well as the transfers of --
21 transfers that occurred from GGC to Alameda contemporaneous
22 new value under 547(c)(1), ordinary course under 547(c)(2),
23 subsequent new value, 547(c)(4) and the safe harbor defense,
24 546(e).

25 Again, I want to just be clear that that relates

1 to the GGC Alameda transactions, but that is -- those are
2 the issues that we've outlined for purposes of the
3 estimation. The chart that was attached does include
4 additional (indiscernible). We have tried to streamline the
5 process and taken those out of estimation with the exception
6 of customer property under 541, which again, we think will
7 be taken out to the extent those claims are withdrawn, as I
8 mentioned, by the FTX debtors, which they state that they
9 were going to do.

10 So that leaves essentially the list of issues --
11 and some of them are affirmative elements, others are
12 defenses -- that would be part of the estimation proceeding.
13 As I noted, ordinary course defense is one that requires
14 factual and expert discovery. We are well under way.
15 546(e), we intend to rely on expert testimony. The other
16 issues are all legal in nature. Assuming we have a sort of
17 a basic set of stipulated facts, which I think we can get
18 given our meet and confers.

19 THE COURT: All right. So following up with your
20 comments, then I think what it means is that what I'm
21 hearing is that Items 2, collateralization; Item 3,
22 contemporary new value; 4, ordinary course; 5, subsequent
23 new value; and 7, safe harbor are ones you've identified as
24 being part of an estimation procedure. And that 1, solvency
25 and 8, are ones that are carved out by virtue of the

1 language in the revised proposed orders as not being
2 covered. And I guess that would then leave 6, which you say
3 might be mooted out. And it would leave 9. Am I sort of
4 understanding the lay of the land right?

5 MS. VANLARE: That's right, Your Honor.

6 THE COURT: All right. And what would the
7 situation be with nine? Would that be part of estimation or
8 something that you think may not end up getting there?

9 MS. VANLARE: No, I don't, I don't think so. I
10 think that will be something that we can handle through
11 stipulated facts. I think we're largely there on that
12 issue.

13 THE COURT: All right. And so backing up from the
14 granular to ask the bigger question then is for purposes of
15 estimation, how should I think about this intellectually
16 speaking? Is it an estimation where I am supposed to take
17 into a, I'm supposed to estimate what I think the defenses
18 are worth or the claim is vis-a-vis those defenses? And
19 that what you're trying to do is say, well, we think that
20 once you consider these defenses, it'll lead to a
21 significantly smaller claim for purposes of -- or in your
22 view, no claim at all -- and so I won't need to reach the
23 other ones? Like if you were to frame the issue, what is
24 it? You just say, Judge, we just want you essentially to
25 estimate because we think the discounting of the claim based

1 on these five identified bases will be sufficient for our
2 purposes? Because obviously I'm not estimating the claims
3 per se. I'm estimating the claims when I evaluate from your
4 point of view, these five defenses.

5 MS. VANLARE: Well, I do think that the issue of,
6 you know, we could frame it as collateralization. We can
7 frame it as the transfers that took place between GGC and
8 Alameda. I wouldn't characterize that as a defense, but I
9 think they do go to the affirmative claims. But to answer
10 your question, Your Honor, I do think that these defenses
11 and our arguments with respect to the affirmative elements
12 of these purported claims, we think are significant. Again,
13 we think that these claims should be estimated at zero and
14 we think that there is, in terms of the -- we will present
15 arguments on those issues that may very well, we'd like you
16 to believe, we'll convince you to estimate them at zero or a
17 very small number. We think that that may obviate the need
18 for us to go on to consider what we think are going to be
19 more lengthy, time consuming, and expensive issues.

20 We do, however, preserve our rights to pursue
21 those issues if the estimation proceeding does not result in
22 a claim amount that that is satisfactory to the debtors.

23 THE COURT: All right. I think those were all the
24 questions that I had. I don't know if you have anything
25 else you wanted to add before, before concluding your

1 presentation?

2 MS. VANLARE: I don't think so, Your Honor. At
3 this time, I'll just reserve my time to respond to anything
4 that the FTX counsel may say.

5 THE COURT: All right. So, so let me, before the
6 FTX folks dive into their presentation, let me ask you. I
7 look at the clock. It's, it's almost 1:20. I don't want to
8 cut anybody off. I do have a customer at two o'clock in a
9 manner that will be significantly less complicated than this
10 one. And so, what I might suggest is taking a break and
11 resuming in an hour so that people cannot be cut off and
12 also don't have to survive without lunch. But I'm, I'm open
13 to suggestions. I've often powered through hearings and
14 skipped lunch entirely, but I've been told by my wife that
15 that's a terrible thing to do without consulting with
16 everybody else and recognizing that some people actually may
17 have medical conditions that require them to eat less they
18 have medical issues. I don't want to make any assumptions.
19 So I think that question is really directed to FTX since I
20 think you're next up.

21 MR. DIETDERICH: in Your Honor, Andy Dietderich
22 for FTX. We will not contest your wife's position on the
23 issue.

24 THE COURT: All right. Well, that's, that's my
25 general rule of thumb. So, all right, with that, let's take

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1 a break to 1:15, I'm sorry, to 2:15. As again, we have a
2 matter on at 2:00 that should be concluded by 2:15. And
3 we'll resume with FTX's views. And anything else before we
4 adjourn? All right. Thank you very much. See you in about
5 an hour.

6 (Recess)

7 THE COURT: All right. With that, we will return
8 to Genesis Global Holdco LLC, a Chapter 11 case on for an
9 omnibus hearing and when we last left, we're getting ready
10 to hear from the FTX Trading debtors on the various -- on
11 the two issues, motions that we're discussion which is, one
12 is an estimation motion and the other is the motion to lift
13 stay.

14 So with that, I'll turn it over to counsel for FTX
15 Trading.

16 MR. DIETDERICH: Thank you, Your Honor. Good
17 afternoon. For the record, Andy Dietderich with Brian
18 Gluckstein and Ben Beller for the FTX Debtors. Thank you,
19 Your Honor.

20 We filed the lift stay motion, as Your Honor
21 knows, on May 3rd. The hearing initially was delayed at the
22 Debtor request. We're seeking relief from the stay in order
23 to liquidate our claim as quickly as we can. We're the
24 plaintiffs. We have no interest in delaying. The Genesis
25 Debtors responded by filing an estimation motion. This

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1 raises, I think as Your Honor summarized, two threshold
2 questions. I'll characterize them as follows and hope this
3 is fair.

4 First, has the Debtor carried its evidentiary
5 burden to show our undue delay under 502(c) of the
6 Bankruptcy Code? And second, if the Debtor has carried that
7 burden, how should this Court balance the harms between
8 using estimation to resolve the issues in dispute and
9 allowing the stay to be lifted to resolve the issues in
10 dispute in Delaware?

11 Now, Your Honor, respectfully, we believe the
12 first issue, the first question is dispositive today. There
13 is no evidence of undue delay in the record before the
14 Court. There's no witnesses, no declaration, no documents,
15 no facts. We've heard some things from counsel about
16 timetable. Much of this is new to us, constantly changing,
17 and all of it is speculation. When will distribution
18 starts? For that matter, when will the plan be confirmed?
19 When will mediation end?

20 THE COURT: Well, but let me cut to the chase a
21 little bit in that we -- this is our second conversation on
22 this. So as we all know from large Chapter 11 cases, you
23 can't turn the aircraft carrier quickly. And so as I
24 understand the request, it's a request because it's made
25 now, because even if it's granted now it's going to take

1 essentially months for things to actually get to a
2 conclusion.

3 And so one of the things I understood about FTX's
4 position in connection with this motion, without prejudicing
5 your other arguments, is that it seeks to trod upon issues
6 that were near and dear to the FTX's debtor's heart that you
7 thought were crucial, central, and should be litigated in in
8 the bankruptcy cases filed by FTX Trading in Delaware. And
9 it seems that there has been a recognition of your concern
10 in seeking to back out. I know they reserve their rights,
11 but let's put that aside for a second, the issues of the
12 value of FTT and the solvency or insolvency of the FTX
13 debtors and not seek to estimate those or address those in
14 the context of the estimation motion.

15 So I know that that's -- we're not talking about
16 undue -- we're not talking about the undue delay issue you
17 started off with but are there -- I'm just asking you about
18 the carving out of those things, putting aside the
19 reservation of rights. Does that represent progress from
20 your point of view in the sense that the idea is to not
21 touch those and to touch more traditional issues that are --
22 would have to be addressed in this case, whether it's new
23 value or ordinary course or safe harbor defenses?

24 Does that solve at least partially your concern
25 about trodding in this Court upon issues that really should

1 be decided in the Delaware Court?

2 MR. DIETDERICH: No, Your Honor. It doesn't. In
3 fact, it makes it worse.

4 THE COURT: Well, that I have --

5 MR. DIETDERICH: Cherry picking --

6 THE COURT: I have hard --

7 MR. DIETDERICH: Well, let me --

8 THE COURT: Hyperbole aside, I have trouble
9 imagining it makes it worse, but go ahead.

10 MR. DIETDERICH: Well, it's the -- well, in our
11 view, we should proceed with the adversary proceeding in
12 Delaware and litigate everything as quickly as we can.
13 Proposal from the Genesis Debtors is to effectively cherry
14 pick issues. So we're denied --

15 THE COURT: But the cherry picking issues you
16 identified is important to you. So, and issues that I said,
17 can't you figure out what should be the lead dog here versus
18 the lead dog in Delaware; so I'm not going to blame people
19 for pursuing an intellectual exercise that I thought we were
20 all behind at the last hearing and that certainly I
21 encouraged.

22 MR. DIETDERICH: Well, there's two. There's two
23 problems, to be precise, Your Honor. Right? The first is
24 that the issues are not neatly divisible. The FTT was
25 posted as collateral here. So virtually all of the defenses

1 raised relate to the very questionable decision to accept
2 FTT as collateral for a loan to Alameda. So the valuation
3 of FTT relates to collateralization, relates to subsequent
4 new value, and it relates to really everything on that list.

5 THE COURT: Well, but that's not the way it's
6 pitched in the list, which is attached to your letter, and
7 the list says for collateralization, anticipate factual
8 evidence that can be satisfied by stipulated facts. Whereas
9 -- that's number two, whereas number eight FTT valuation
10 defense is one that I understand the Debtors are by virtue
11 of the amended order, agreeing that they don't wish to
12 proceed with in the estimation motion.

13 MR. DIETDERICH: Your Honor, to be clear, this is
14 the Debtor's list. It's not our list. And FTT was posted
15 as list, it's not our list. And FTT was posted as
16 collateral. So the question of the value of FTT is the
17 question in whether or not the position was collateralized
18 or not.

19 THE COURT: But if I take them at their word that
20 they're agreeing to not litigate the value of FTT at this
21 time, or the solvency or insolvency of any of the FTX
22 debtors, my thought is that while you could litigate those
23 issues as to the debtors by lift -- by having the stay
24 lifted here so that you can proceed in Delaware, certainly
25 those issues, no doubt will manifest themselves in other

1 ways in that case, which you are free to litigate with or
2 without my lifting the stay because you don't have to ask
3 permission of this Court to do what you need to do in your
4 in your case in Delaware.

5 And that we'll see how those issues go and what's
6 decided here on things that aren't those issues and what's
7 decided in Delaware. You're free to litigate those issues
8 in any other context in which you want and without fear that
9 this Court will somehow get in front of you on those issues.
10 And that's sort of the way cases that have similar issues
11 are litigated all the time.

12 MR. DIETDERICH: So Your Honor, maybe -- perhaps I
13 can try to try to better understand the direction of Your
14 Honor's thinking. The -- is a hypothetical, the stay is
15 lifted and we're proceeding to litigate selected issues in
16 Delaware --

17 THE COURT: No, no --

18 MR. DIETDERICH: -- and estimating selected issues
19 in front of Your Honor?

20 THE COURT: No. The idea is that the concern was
21 or one of the concerns was that the Debtors would litigate
22 here issues that really in your view should be litigated in
23 Delaware and those included, most prominently, the value of
24 FTT and the solvency or insolvency of any and all of the FTX
25 debtors. And --

1 MR. DIETDERICH: I see.

2 THE COURT: And that the Debtors have backed off
3 of that They've reserved their rights, but frankly, I have
4 trouble imagining that this Court should ever be the lead
5 dog on those particular issues, given the centrality to the
6 FTX bankruptcy case. But in any event, because it's better
7 to deal with practicalities than theoretical propositions,
8 that -- so the estimation would carve those out. We
9 wouldn't cover them. And that there's nothing about this
10 case that prevents you from litigating those issues in the
11 FTX case in Delaware.

12 What the stay would do is prevent you from
13 litigating it as to these Debtors, but I can't imagine that
14 the value of FTT and the solvency or insolvency of the FTX
15 debtors are issues that wouldn't have other vehicles in the
16 Delaware case for addressing those issues. And that what
17 you're left then with is a much more garden variety problem
18 of what -- of estimation, whether it's appropriate on these
19 issues and we're not worried about the clash between the
20 bankruptcies.

21 So I realize my question sort of jumps to a
22 different issue than you started off with, which is not
23 undue delay, but rather the clash, potential clash between
24 the two bankruptcies and how to stay in our respective lanes
25 so that people can do what they need to do in their own

1 bankruptcy cases, so that's sort of where I'm starting off.

2 MR. DIETDERICH: Understood. Understood. I
3 understand now, Your Honor. Thank you very much for that.
4 So it's really the question of the balance of harms and is
5 there a win-win here, but just to focus for a second on the
6 issues. So on the Debtors' lists of issues, number two is
7 collateralization. Virtually all of the collateral was FTT.
8 The issue on the valuation of FTT, if FTT is valued in the
9 way we're going to take the position that the loan is
10 uncollateralized, so the collateralization question is
11 entirely a function of how you value FTT when posted as
12 collateral for a loan to FTX.

13 THE COURT: Well, I guess what I'm saying is there
14 may be moments that we would need to figure out the exact
15 permutations of what would go ahead in estimation here. But
16 I understand from the order, the revised order that was
17 submitted, is that it's a statement saying that the Debtors
18 may assert any and all defenses available to them in -- as
19 against claims asserted for the present estimation, except
20 for, absent an order of the Court, those relating to the
21 value of FTT and the solvency or insolvency of any or all of
22 the FTX debtors. So --

23 MR. DIETDERICH: So --

24 THE COURT: So it bumps up -- so my understanding
25 of that is if it bumps up against those issues, then we're

1 going to have to have a conversation because those are
2 things that are being carved out. Now, it may be that for
3 some of these potential defenses that are identified in this
4 chart, that there's a much more clear demarcation line,
5 right, so whether it's new value or ordinary course, and
6 that maybe collateralization does or doesn't. Maybe the
7 parties as contemplated in this chart can actually reach a
8 set of stipulated facts, meaning I don't have to address the
9 issue and you can nonetheless address the collateralization
10 under 547(b)(5) here. But if it bumps into it, my
11 understanding is the Debtors are saying we have no intent to
12 move forward with anything that bumps into these two issues,
13 the value of FTT and the solvency or insolvency.

14 MR. DIETDERICH: Well, Your Honor, so you can take
15 that at face value. The order, by the way, the order does
16 not say the value of FTT is off limits. It says the value
17 of FTT is off limits in connection with withdrawals from
18 FTX.com, which is the exchange claim, not the loan claim.
19 The claim against GGC is the loan preference claim. So
20 that's the claim for loans to Alameda. There's nothing in
21 this order that makes the value of FTT off limits for the
22 loan claim. I assume that's intentional because again,
23 virtually all of the collateral for the loan was FTT.

24 If the loan -- if FTT is valued at stock price at
25 the time of the repayment of the loan, the preference is

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1 very small. If FTT is valued the way that we would value it
2 on the petition date for FTX, the preference is very large;
3 but I take Your Honor's point that --

4 THE COURT: Well, let me back up there for a
5 second. Are there other -- you've identified the
6 collateralization claim as one where you think the language
7 in that Subsection A may not solve your problem. Are there
8 other ones that would fall into that category or is
9 collateralization sort of uniquely problematic from your
10 point of view?

11 MR. DIETDERICH: I think collateralization and
12 contemporaneous new value are really different ways to say
13 the same thing, right? Because there's an argument that --
14 I don't know how deep we should get into the merits, Your
15 Honor -- but there's the argument of contemporaneous new
16 value is we returned collateral to you and that collateral
17 had a value that went to the amount of the repayment.

18 The ordinary course defense has something to do
19 with FTT as well because the collateral for the loan was FTT
20 which of course was equity effectively in FTX. So we need a
21 position among all of our FTX creditors in the Alameda loan,
22 all the similarly situated Alameda loan creditors, we need a
23 position on how to deal with ordinary course for people that
24 made a lending decision based on collateralization by FTT.

25 Subsequent new value is perhaps one of the few

1 that is independent, but I'm not even sure that's in
2 dispute. So Your Honor is correct that you could identify a
3 few issues that seem to have more to do with Genesis than
4 with FTX, but on the basis of this list, I don't fully
5 understand what those are, but it goes to the second problem
6 with this, whether it is 0 percent or 50 percent of this,
7 that has to be held in reserve because it relates to these
8 core issues. And again, we think all of it relates to the
9 core issues.

10 There's a heads I win, tails you lose element to
11 this because in ordinary civil litigation, we would tee all
12 of this up and we would resolve the issues. What the Debtor
13 is proposing to the cherry pick particular issues and if
14 they win on those issues they win, we lose. If they lose on
15 those issues, we're back at square one because we've made no
16 progress in our underlying litigation.

17 THE COURT: Well, except that we've resolved
18 issues that need to be resolved.

19 MR. DIETDERICH: Only negative to us. We can only
20 lose in that process.

21 THE COURT: Well, I don't know if it's negative or
22 positive for anybody until I decide it, so that -- the
23 cherry picking issue, I would offer this observation, and I
24 sort of was trying to get at it in my question before, which
25 is, if the agreement is -- I'm trying to understand the

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1 scope of the agreement. But as I understand it now, there's
2 a certain caveat emptor quality to it, which is to say
3 Judge, we recognize we wouldn't be teeing up everything.

4 We would be teeing up these things for purposes of
5 estimating the claims. We think that doing it that way, we
6 think will result in a number low enough -- their number is
7 zero; obviously, that's not your number -- that we could
8 then move the case forward and not have an issue. But if it
9 turns out that that's not the case, they want to reserve the
10 right to then talk about the value of FTT or the solvency or
11 insolvency. I understand those are core, much more core
12 issues to your case.

13 I have trouble wrapping my brain around this
14 being, this particular forum being the appropriate place to
15 be the first place to address that. But again, my thought
16 is if the Debtors are willing to proceed with other issues,
17 however they work out, they work out and I can't prejudge
18 what the results will be. But if it doesn't bump into the
19 core concerns in the Delaware case, if we can figure out a
20 way to do that, then it becomes a question of, well, is
21 there undue delay, is this an efficient way to deal with
22 things.

23 But certainly undue delay, the sheer size of the
24 claim when it comes to distribution, I haven't seen anything
25 that seems to resolve that as an issue for purposes of undue

1 delay for distributions. I recognize you need a plan before
2 you have distributions. So, but at the same time, this
3 can't -- we can't throw together a schedule and say we've
4 just confirmed the plan. Distributions are supposed to
5 happen. The effective date is supposed to be in two weeks
6 and now we're going to litigate this in two weeks and that's
7 -- we know that doesn't really work.

8 So my question is whether I can find a way to
9 handle the estimation in an appropriate way that doesn't
10 infringe upon issues that in the first instance should be
11 dealt with in Delaware, and then we're faced with a more
12 traditional question about estimation, undue delay in the
13 context of the case, and then we can start talking about
14 schedule in the sense that these things ultimately will have
15 to be decided and we can start down the road and we can see
16 where we are.

17 Again, I favor trying to resolve these things with
18 practical solutions based on real issues and what's actually
19 going on. So every day that the FTX case progresses and
20 this case progresses, things will become clearer as to what
21 does constitute undue delay, when undue delay becomes a
22 significant issue, and also what other things are being
23 litigated in your case in FTX that deal with the value of
24 FTT or the solvency or insolvency of the FTX debtors.

25 So, that's why I thought discovery should go ahead

1 because discovery is, something's going to have to happen no
2 matter how any of this is parsed. And that using this list
3 of potential defenses to the claims in conjunction with the
4 statement made in the revised proposed order, the question
5 is whether we can thread that needle.

6 Now, you're telling me it's not nearly as easy a
7 needle to thread as it may appear; that may be right. I
8 don't -- you all are more familiar with it than I am, but
9 the question is whether we can actually do that so that the
10 issues that are central to the Delaware case are decided in
11 the first instance in Delaware.

12 Now, they may ultimately have to be decided here
13 at some point, all right. There's -- I don't know, but
14 there seems to be no reason to make those the lead dog of
15 issues to decide in estimation and in fact, the Debtors at
16 least seem to be signaling that that's not their intent,
17 whether Subparagraph A goes far enough in your eyes, that's
18 a very legitimate subject of discussion. I don't know the
19 answer because you all are far, much further ahead than I am
20 in terms of parsing out the details.

21 MR. DIETDERICH: Your Honor, maybe I can -- let me
22 focus on the practical side from our perspective for just a
23 second because I agree with you that there should be a
24 practical solution here, one that allows the litigation to
25 proceed in the forum that, you know, seems mostly related to

1 the issues. So maybe as thought exercise, if this was not a
2 question of delay and distribution and it was simply a
3 question of where should an adversary proceeding be in a
4 preference action. that would normally be in the bankrupt
5 estate from which the preference emanates because the
6 preferences are, I think really an intercreditor issue
7 designed to put people in a similar, you know, position.

8 But there is this effect, a real effect on the
9 Genesis bankruptcy. Our practical solution for that is to
10 do the merits litigation in front of Judge Dorsey in
11 Delaware because of the relationship between this claim and
12 the claim against the sister company GGC. GGC on June 30,
13 our bar date, put a claim into FTX's bankruptcy. Even if we
14 were successful on the preference action, of course, the
15 result of that is a replacement claim that Genesis would
16 have into FTX, so it's kind of inherent in the claims
17 resolution process.

18 But to address the concern to agree or determine a
19 reserve that is a cap on our recovery in Genesis, and when
20 we proposed, and there was some confusion about that again
21 today. Maybe I should just walk through exactly what it is
22 we propose in terms of a cap. We propose a 30 percent
23 proportional cap on distributions and the 30 percent, Your
24 Honor, is simply based upon our reduced claim amount and
25 what little we know about the claims group. That is subject

1 to decrease as we learn more about the claims group, but the
2 30 percent is a proportionate reserve.

3 What does that mean? That means that you can go
4 ahead and proceed, confirm the plan, go effective on the
5 plan. All secured claims and all priority claims can be
6 paid without delay. And to the extent there is money to
7 distribute, 70 percent of that money can be immediately
8 distributed without needing to take into account our 30
9 percent reserve. So if there's a billion dollars to
10 distribute, there's \$700 million --

11 THE COURT: So the 30 percent is on the amount of
12 value left for unsecureds as opposed to the face value of
13 claims?

14 MR. DIETDERICH: Exactly. It's a distribution.

15 THE COURT: All right. That's not how I --

16 MR. DIETDERICH: It's a distribution.

17 THE COURT: That's not how I think Ms. VanLare
18 read it and when she pointed it out, I understood her
19 concern.

20 MR. DIETDERICH: And so the question is --

21 THE COURT: That's a very practical way of
22 approaching the problem. So I don't -- so I think the
23 parties have made have made significant progress in trying
24 to frame different avenues for resolving the friction
25 between the party's interests. I -- one of the reasons I

1 ask you all to sit down and meet and confer is because some
2 of this is a matter of negotiation, right? And I have
3 learned in this Court, my time in this Court, that there are
4 certain times when I am not helpful in terms of that and I
5 don't want to look like I'm ganging up on one side or the
6 other.

7 My comments try to -- I try to generate those from
8 the legal problem I have in front of me and what the case
9 law says. So here, I guess that's a conversation worth
10 having because certainly that's not -- that's a significant
11 difference in how Ms. VanLare understood that statement in
12 the letter, because it does talk about claims rather than
13 amount. And so I don't know the answer to that and that
14 probably is a question and a conversation to have in the
15 first instance with the Debtors to see if there's a way to
16 thread that needle.

17 What I understand to be is the concern is about
18 the delay in this case that will be -- that will occur by
19 the sheer size of the FTX claims and that seems to be fairly
20 self-evident, not at all sort of subject to spin. It is
21 what it is. The claim is what it is size-wise and that will
22 stand in the way of distributions, even if perhaps not in
23 the way of the plan.

24 So I don't know if there's a difference in
25 attitude about reserves being based on the amount of money

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1 available as opposed to the amount of claims. I'm happy to
2 give the parties a chance to talk about that. So I don't
3 know what else I can say or how else I can move the needle
4 forward on that. I don't want to put Ms. VanLare on the
5 spot necessarily, because I think that's a -- she can
6 confirm for me in the head nod if that's a significantly
7 different way of reading that sentence in the letter than
8 how she understood it.

9 MS. VANLARE: Your Honor, if I could respond to a
10 few of the points. So I think it is different than what the
11 letter says. It nevertheless is a very, very high number
12 that -- so I think that our position as to the undue delay
13 would be the same, but I did want to just clarify --

14 THE COURT: Well, frankly, it shouldn't be the
15 same though. I'm not saying it's dispositive of the issue,
16 but it is a significantly different situation. When you can
17 pay off everything that's priority secured and then you can
18 pay off 70 percent of the money available to unsecureds, in
19 cases you often have distributions over time. Right?
20 That's a fact of life.

21 So again, I don't want to put you on the spot, but
22 I do think it's a significant difference from how I read the
23 letter.

24 MS. VANLARE: I agree with that, Your Honor.
25 Obviously, 30 percent is lower than 100 percent. So that's

1 true. But if it -- my point was that even than 30 percent
2 is very high in this case and it raises, as I mentioned
3 earlier, a host of issues that you don't have in other cases
4 having to do with the type of assets that we have, the fact
5 that we are seeking to make in-kind distributions, the fact
6 that these are dollar claims. We have different types of
7 digital assets and other types of assets. So it just, it
8 raises complexities and issues that other cases may not
9 have. That's --

10 THE COURT: Well, each case, they're like
11 children. Each has its own set of concerns and issues and
12 that's fine and we'll work through them. But again, I see -
13 - the conversations we're having on these motions are
14 distinct but related. One is about undue delay in this case
15 and the other is about not unnecessarily interfering with
16 each other's bankruptcy cases. And so I think by trying to
17 identify things that you weren't going to address, I think
18 you were trying to significantly address that and maybe we
19 can reach a resolution on that and maybe estimation works.

20 At the same time, if there's a way to address the
21 undue delay component by reaching an understanding about how
22 a reserve would work because the FTX Debtors care enough
23 about having the Court in Delaware where their case is
24 pending, be the Court that addresses issues like the value
25 of FTT and the insolvency issues. Then you know, that's a

1 bit of a horse trading conversation that I'll let you all
2 have.

3 So let me do this. Let me hear anything else that
4 Mr. Dietderich wants to say and then I'll loop back. I know
5 Mr. Shore hasn't been heard either, so --

6 MS. VANLARE: Yeah --

7 THE COURT: I'll loop back to you, Ms. VanLare, as
8 soon as Mr. Dietderich is done. So Mr. Dietderich.

9 MR. DIETDERICH: Sure. To reiterate, Your Honor,
10 is kind of where we started to put it all together, which is
11 to say that where it stands now, what we're proposing is to
12 lift the stay and we pay 30 percent (audio drops) reserve
13 based on the amount distributed. So set up all secured and
14 priority distribution can be paid immediately; 70 percent of
15 everything else can be done immediately; and the reserve is
16 funded effectively as distributions are made.

17 And that reserve, of course, is no longer
18 necessary to litigate the merits which again, we were
19 committed (audio drops) basis in front of Judge Dorsey.

20 THE COURT: Well, again, I understand so. So I'm
21 going to try to push everybody towards the middle here in
22 the sense that that's my job, right? In the sense that --

23 MR. DIETDERICH: Of course.

24 THE COURT: -- if issues about the reserve can be
25 resolved and free up a certain, resolve a certain level of

1 urgency, if not all, but not necessarily all the urgency,
2 that doesn't necessarily change the fact that the Genesis
3 Debtors are going to say there are certain things that
4 should happen here because they are claims adjudication for
5 -- that should happen here. And so -- and that's where I
6 think we get into the issue of trying to, if we can, figure
7 out what lanes this case should stay in versus some lanes it
8 shouldn't. I understand that you don't view the defenses as
9 cleanly as the Debtors do in terms of the value of FTT and
10 the solvency or insolvency. At the same time, I don't think
11 we've reached the end of the road on that.

12 There certainly seems to be a more nuanced
13 discussion to be had among the parties as to how we might
14 address those things and we certainly need a process to deal
15 with claims adjudication. One potential -- and I'll throw
16 something else into the hopper because we don't have enough
17 -- which is, if there is a way to essentially figure out an
18 appropriate lane, you might skip estimation altogether and
19 just resolve certain claims issues. And -- because if
20 they're more narrow and they're dealt with -- and they're
21 legal issues and they're dealt with unstipulated facts that
22 we might just be able to do them promptly.

23 But again, I don't know because you're more
24 familiar with what the litigation might look like. So
25 anything else that you can offer in terms of wisdom,

1 particularly on the issue of working with the language
2 identified in paragraph -- I think Subparagraph A is the one
3 where the -- where we've got the flash points. I don't
4 think anybody has really spent a lot of time disagreeing
5 about the solvency or insolvency of the FTX debtors as to
6 where to draw those lines.

7 But for the value of FTT, any other wisdom about
8 the --

9 MR. DIETDERICH: Yeah --

10 THE COURT: -- defense as to --

11 MR. DIETDERICH: Your Honor, we will certainly
12 continue to consider that very carefully, Your Honor. My
13 initial reaction is we have a lot more flexibility on the
14 amount of the reserve than on separating out particular
15 elements of preference claims from the main FTX case because
16 all the creditors are similarly situated with respect to
17 these same questions. Even ordinary course is fundamentally
18 a question of what's in the ordinary course where the debtor
19 would have -- GGC would have to show what's in the ordinary
20 course of FTX.

21 THE COURT: But you know, there -- so let's
22 default, though, to the general rules of the road. There
23 are lots of cases where similar issues are decided in
24 different Courts. That happens. And a certain amount of
25 that is contemplated by the federal system and there are

1 rules of construction and rules about res judicata,
2 collateral estoppel, about what can actually be -- people
3 can be held to and what they can't be held to.

4 And so there very well could be, and it sounds
5 like there likely will be issues that come up in this Court
6 that come up in other cryptocurrency cases where judges are
7 asked to confront similar issues that might have spill-over
8 but won't be dispositive of the issues and judges may come
9 to similar conclusions or different conclusions. And some
10 of those opinions will then be persuasive or not persuasive,
11 and so I don't know that we can fix that. I don't think
12 there's necessarily going to be a way to hermetically seal
13 the two cases. What I --

14 MR. DIETDERICH: I understand, Your Honor, but I
15 do think there's --

16 THE COURT: One more thought, though, is that I
17 think there are, in the interest of good judgment and
18 discretion, things that should be issues of prominence in
19 one case versus the other case, and so we've identified to
20 the value of FTT and solvency or insolvency. And I think
21 the devil's in the details as to how we parse those out.

22 But from what I have seen, those are issues near
23 and dear as they should be to the FTX debtors and that those
24 are issues that if you were to think about it from a purely
25 theoretical point of view, that if you could isolate them,

1 they should be in Delaware. But I can't promise that every
2 aspect of every defense is going to be entirely devoid of
3 interest to people who have other cases. That rarely is the
4 case anyway.

5 MR. DIETDERICH: There also are cases, Your Honor,
6 to pick up on the idea, where the reserve is effectively
7 probability weighted, right? The estimation is used to
8 probability weight a reserve. That's been done in a couple
9 of cases with appeals, for example.

10 But let me just return to the, I think, the most
11 important point is, you know, from our perspective, which
12 goes back to the question of the Debtors' burden to show
13 undue delay or the estimation power is used, a threshold
14 issue for the use of the estimation power is undue delay.

15 So in our view at a 30 percent proportional
16 reserve, there is no undue delay. If there needs to be a
17 smaller percentage reserve for there to be no undue delay,
18 we are totally open minded. But you know, what we I think
19 the next step, of course, is discussions with the Debtor and
20 we'll participate with those, you know, actively and we have
21 flexibility.

22 But if we don't have an understanding, we do think
23 the next step that, you know, subject to Your Honor's view,
24 is probably an evidentiary hearing on the question of undue
25 delay. So we can test this evidence about the timing of

1 their case and distributions and everything.

2 THE COURT: There are a lot of next steps. I
3 don't know that that's the next step, but we'll get there
4 when we get there.

5 MR. DIETDERICH: Thank you very much.

6 THE COURT: All right, thank you. So let me hear
7 from Ms. VanLare to respond sort of directly to things and
8 then I'll hear from Mr. Shore to weigh in on behalf of the
9 Committee.

10 MS. VANLARE: Thank you, Your Honor. So two
11 points. First just -- I just want to clarify our thinking
12 of value of FTT. Some of the things that, that Mr.
13 Dietderich said and I just want to make clear it's in the
14 record. So first, it's, FTT is a significant portion of the
15 collateral of what was returned to Alameda. It is not
16 solely FTT.

17 Secondly, our intent was, as you, Your Honor,
18 noted in the order, to limit our ability to raise that as a
19 defense to the FTX.com withdrawals. I think we intend to
20 reference the value of FTT in the context of our defenses
21 vis-à-vis the GGC Alameda transactions. But we do not need
22 to have a trial on the "real value" of FTT on any given
23 time.

24 In other words, I think we can reference the value
25 as of a certain transaction without needing to have a full-

1 blown evidentiary trial on what the right value is. And
2 that is the thing that we wanted to take off the table. And
3 as to --

4 THE COURT: So let me just -- I'm going to try to
5 address them as you raise them. The short answer is, I
6 don't know. I mean, Mr. Dietderich had a very colorful face
7 that he just made when hearing that. I really don't know,
8 because there are times when folks say for purposes of this
9 exercise, the parties can agree the value isn't below X or
10 isn't above Y or falls into this range and therefore we
11 don't need to go any further.

12 You all are much closer to it than I am, but there
13 are other times where it's the problem of being a little bit
14 pregnant. You either -- you're either discussing it or
15 you're not. And I don't know. You're going to have to
16 inform me and that's conversations that I'll ask you to have
17 using paragraph -- Subparagraph A as a sort of a launching
18 point to see if you can reach some sort of understanding.

19 The other thing I would say in the context of
20 reaching an understanding is in large cases, it is often
21 done, as you know -- again, I'm not telling you anything you
22 don't know -- that people say, Judge, there's a million
23 things we could talk about, but we -- three should be on
24 your radar screen and you should do these three in this
25 order and we might not even get to number three depending on

1 what happens with number one, number two and other issues.

2 And so again, I urge people to think about this
3 practically so that we can avoid sort of theoretical fights.
4 And it may be that we say everybody agrees or Judge, this is
5 our suggestion about what should happen in the next two
6 months, three months. We should tee up these issues,
7 resolve these issues, leave those alone. We might fight
8 about them later, we might not. And so if I wouldn't have
9 ordinarily suggested this in the context of an estimation
10 because normally you're estimating a claim. At the same
11 time, the Debtors have suggested that jeez, we are okay with
12 having you take a look at estimation for purposes of certain
13 issues and not others.

14 So I throw that out there to the extent that the
15 passage of time may moot out, alter, or you know, the issues
16 that we have to get into and what those concerns look like.

17 MS. VANLARE: My only point, Your Honor, is that
18 spot value of FTT is a fact we can argue and it's a legal
19 question as to the relevant timing of that value, and that
20 can be decided without necessarily going into and having a
21 large evidentiary process. Again, we can limit it to a
22 legal discussion as to the timing of the spot prices, they
23 may have a different view and we can address that.

24 THE COURT: Yeah, but --

25 MS. VANLARE: But I don't think we -- (audio

1 drops) to clarify is that we're not waiving those types of
2 arguments. But again, I think it's consistent with our
3 general position is that we can make those arguments on this
4 timeline that's consistent with estimation.

5 In terms of some of the other points, I mean, I
6 fundamentally disagree with how the legal standard was
7 proposed. Again, I think on the stay, they have not met
8 their burden on lifting the stay, so I think the -- under
9 the Second Circuit standard, the stay should not be lifted.

10 I think on undue delay, we have met our burden. I
11 think we've shown there's enough in the record here that's
12 sufficient for Your Honor to make those findings. And I
13 think that again, in their own letter and in their own
14 papers, I don't think there's any dispute whatsoever. To
15 the extent there is, again, it's party admission. It's all
16 in their filings that allowing this process and the full
17 litigation to unfold will be substantially longer.

18 I think we are not opposed, obviously, as we've
19 always shown. We're not opposed to continuing discussions
20 and having meet and confers and including on the reserve
21 issue. I think so far, the letter that was filed yesterday,
22 that does not work for us. We're happy to continue
23 discussions, but what we are kind of running against the
24 clock of trying to maintain our confirmation timeline and so
25 my concern is that we continue those --

1 THE COURT: We don't -- yes and no. We don't
2 quite have a confirmation deadline because we don't have a --
3 - we don't have a significant component yet. Right? Again,
4 I'm not trying to rain on your parade, but the further the
5 extension of the mediation period is a significant thing and
6 some issues have to get resolved. So I understand the need
7 for haste and I'll take it that way and I understand the
8 size of the claim means that unless there are agreements
9 about how to deal with -- that obviate that kind of a
10 concern that it will stand, the claim as filed stands in the
11 way of distributions. So I get all that.

12 MS. VANLARE: I think that's right, Your Honor.
13 We do have a plan on file. We hope to reach a consensual
14 resolution, in which case we'll amend it. But as it stands,
15 we do have a plan on file. We have a disclosure statement
16 hearing.

17 THE COURT: I understand. Everybody always has a
18 plan on file. I get it. I get it, but it's -- there's a
19 mediation going on that is significant as to what funds will
20 be available. And so that's certainly of significance and I
21 don't know how, you know, what that number is or even the
22 range of that number. I would think it's relevant to
23 disclose to creditors voting on the plan.

24 So again, I get it. You're trying to move things
25 and we'll, as always, do our best to do that. But I -- just

1 like we talk about DIP financing and timeframes that lenders
2 want, I get it, we need to go quickly. But I'm not signing
3 onto the self-professed deadlines necessarily that are baked
4 into the existing plan because I just don't think I know
5 enough.

6 So again, I understand the need. I'm not trying
7 to have this case delayed. But we'll do -- we have to work
8 through these issues. And you all have starkly different
9 takes on how to do that. I think there is something in the
10 middle that at a certain point, I'll just order if I -- if
11 people can't get to the middle themselves that sort of
12 resolves some issues of undue delay in several different
13 ways and I think -- and by having people stay in their
14 lanes.

15 But Ms. VanLare, what else would you like to
16 address before I hear from Mr. Shore?

17 MS. VANLARE: Your Honor, why don't we hear from
18 Mr. Shore. I have nothing else.

19 THE COURT: All right. Mr. Shore.

20 MR. SHORE: Thank you, Your Honor. Chris Shore
21 from White & Case on behalf of the Official Committee. Let
22 me start by this. It sounds like what's going on is people
23 do have a lot of discussions to have and the Committee is
24 not advocating that the Court resolve the motions today,
25 either the lift stay or the setting of the estimation

1 procedures.

2 But I would like to clarify a few points. With
3 respect to the mediation, there is a plan on file which take
4 -- which distributes all of cash and crypto out on the
5 platform on the effective date and puts any litigation
6 against DCG and the related parties into a liquidating trust
7 to be dealt with after the effective date. The Committee is
8 supportive of that plan. That is the plan on file and if it
9 changes, that'd be great. That would mean that there is a
10 settlement which is supported by the Debtors and the
11 Committee to allow for an increased distribution.

12 But right now, the status quo is we have X amount
13 of cash and crypto to distribute and that's what people are
14 going to get on the effective date. So reserves have an
15 actual more deleterious effect on distributions in the
16 current status quo. The mediation would be an improvement
17 upon that and I get it. It would be something that the
18 parties would need to talk to and see if we can't find a way
19 to resolve it, if we have more value to distribute.

20 The Committee does agree with the Court and has
21 from the beginning about the aircraft carrier analogy.
22 Look, I don't think that FTX can claim that an estimation
23 process is trodding on their due process rights and then
24 advocating that you can't decide estimation procedures until
25 there's only two weeks until distributions.

1 That does not seem workable and there's got to be
2 a way the parties can agree on the processes or FTX is just
3 going to have to waive its arguments that their due process
4 is being violated because they were given an opportunity to
5 get ready for this hearing and decided that they wanted to
6 stake it all on an undue delay trial, it sounds like.

7 More substantively, though, Mr. Dietderich has the
8 -- mastered the art of saying that sounds something
9 reasonable on the surface, but the substance would
10 effectively undermine the entire case and put him in a
11 position where he could dictate when and where the Debtors
12 exit. He and his army know full well the plan on file and a
13 critical component of the plan on file, which is the same
14 issue facing the FTX debtors, is providing creditors in-kind
15 distribution.

16 Debtors have cash and various crypto coins to
17 distribute. And we're trying to come up with a plan largely
18 for tax reasons that provides people back an in-kind
19 distribution of what they put on the platform. What he is
20 proposing, a billion dollars of cash, \$800 million of cash
21 being put in the account, would effectively prevent the plan
22 from going effective because people would not be able to get
23 an in-kind distribution or it would disproportionately
24 affect one group of creditors over another.

25 So if it was all to be in cash, for example, the

1 crypto creditors could get their in-kind distributions and
2 less of their cash, but people who will have in-kind cash
3 claims can't get their cash back because it's all tied up
4 with FTX. So his saying, all I want is a \$800 million
5 reserve or four, whatever it's going to be, 30 percent of
6 distributable value, is his way of saying I want the keys to
7 the exit, at which point I will have a better platform from
8 which to negotiate.

9 That is why the Committee has been supportive of
10 an estimation process. We have to have a way in which, in
11 order to get this plan done and to do what the plan is
12 committing to do and what the creditors will be voting on, a
13 way of cordoning off the FTX plan.

14 And that is not just, let's just take the total
15 amount of value that we could get in this process, that is,
16 if our claim were allowed in full, but rather have the Court
17 take the issues that are outstanding. Look at them, and say
18 my view based on what has been presented to me is the FTX
19 debtors have a X percent likelihood of getting to that
20 number.

21 It is a right under the Bankruptcy Code and we are
22 given statutory authority to do so and it just reflects the
23 fact that sometimes you can't wait around for an extended
24 full-blown claims litigation issue, for example, FTT
25 valuation. It's not like Mr. Dietderich has promised, that

1 issue is going to be resolved by October. It's just the
2 issue is going to be resolved in my case. So it holds up
3 all of our distributions until that issue gets resolved.

4 So we need to have, we are supportive of a process
5 that allows the Court to look at issues and say, based on my
6 view of the record before me, this is what I believe an
7 appropriate reserve is.

8 THE COURT: Am I understanding correctly, by
9 virtue of the appearance of this language in the proposed
10 order, that the Committee stands behind the Debtors' attempt
11 to navigate the line as to what should be here versus what
12 should be in the first instance addressed in Delaware cases.

13 MR. SHORE: Correct, but with one modification
14 with respect to the procedure. I don't think it's cherry
15 picking, any more than a summary judgment motion is cherry
16 picking. The federal rules or in this case, the code,
17 provide a basis for people to cherry pick to say even if
18 everything else is true, all these facts in dispute are
19 viewed in the light most favorable to the nonmoving party,
20 you're still not getting there.

21 THE COURT: Well --

22 MR. SHORE: That is that --

23 THE COURT: Well, my view on that is that it's one
24 thing if it's cherry picking in the sense that it's a sort
25 of dishonest rendering of how something affects another

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1 case. But -- and that's sort of been my concern. So that's
2 why we've been focusing on the value of FTT and the solvency
3 issues. But if we can navigate that, you certainly can
4 cherry pick. Essentially your -- I should put that in air
5 quotes. You're certainly giving something up, right?

6 You could say, well, Judge, we really want to be
7 able to assert all of our defenses, but we recognize that
8 there are other things that we have no control over that
9 dictate that really isn't possible or appropriate here, and
10 so we're willing to say, like on summary judgments, if you
11 make the following rulings, we can live with that and if it
12 ends up at the end of the day, whatever the rulings are,
13 they are. And there are issues that have been put in the
14 rearview mirror for purposes of the case and the parties.
15 So, however it ends up, it's progress.

16 MR. SHORE: And then once that, from a timing
17 perspective, my -- our view, the Committee's view is that
18 then we address the issue of okay, we have now set the
19 reserve. It is at X. It's going to have to be at a number
20 that allows the plan to go forward, but as long as it's X
21 minus in that case, then we can address the issue of where
22 and what issues get resolved where. We'll have a much
23 better view with respect to the progress of the FTX case,
24 the timing of any of these determinations.

25 Maybe the Debtors will have started procedures.

1 The FTX debtors will have started procedures to look at
2 those issues. We may have rulings on it. There may be a
3 whole host of factors that would cause the Court to
4 determine that these substantive issues, once the cap is set
5 for distribution purposes, they get solved here in this way
6 and maybe we can work it out.

7 But what we can't do from the Committee's
8 perspective is just say, we're going to have these, we're
9 turn over the cadence of this case to the FTX debtors case.
10 That doesn't work, nor can we have a world in which
11 creditors are prejudiced by the reserve mechanics in a way
12 that that causes it so we can't make distributions at all.
13 Fairly certain that the number that they capped at was
14 designed to make it impossible to get out and we may be able
15 to resolve with them at a later date what that cap is.

16 We're certainly willing to participate in that
17 process, but there are some practical realities behind the
18 central plan mechanic which are causing Committee to support
19 the Debtors wholeheartedly in seeking to set up an
20 estimation process so that, as Your Honor posited, we get
21 to, you know, a confirmation hearing, effective dates
22 projected to be in two weeks, and we got to then come up
23 with a set of procedures that allows us to get that issue
24 determined.

25 THE COURT: All right. Thank you very much. And

1 Ms. VanLare, I think you were letting Mr. Shore go in case
2 you sort of needed to bat cleanup on comments. Anything
3 else that you wanted to address?

4 MS. VANLARE: No, Your Honor. I'd like to just,
5 if I could have an opportunity at the end, but it sounds
6 like Mr. Sazant has something to say as well.

7 MR. SAZANT: Thank you, Ms. VanLare. Just real
8 quick, Your Honor. Unsurprisingly, the Ad Hoc Group stands
9 fully behind the UCC on this and we're complete -- in
10 complete alignment with -- I don't want to belabor the
11 point. Mr. Shore put it adequately.

12 But one thing I'd also like to emphasize is the
13 detrimental impact that a reserve may have in a situation
14 where we're trying to distribute cryptocurrency assets and
15 digital assets to creditors to repay them in kind and as a
16 reserve is held in most likely in dollars in an inflationary
17 environment where these cryptocurrency assets are increasing
18 in price, we -- the Debtors' estate will be able to purchase
19 and rebalance and acquire less digital assets to distribute
20 to creditors who will ultimately have lower recoveries
21 because of it.

22 And so there, there's a severe detrimental impact
23 to any delay and we just want to emphasize that. Thank you,
24 Your Honor.

25 THE COURT: All right, thank you very much. Any

1 other --

2 MR. DIETDERICH: Your Honor --

3 THE COURT: Any other party that wishes to be
4 heard who hasn't been heard at this point? All right. So I
5 realize there are different motions. So there's no,
6 everybody sort of -- but we, the issues have sort of melded
7 together. So I think I have a pretty good idea of
8 everybody's position at this point.

9 Is there anything else that's new that somebody
10 needs to add, again recognizing that I have read and reread
11 your papers a number of times and we've had an extensive
12 discussion here this afternoon.

13 MR. DIETDERICH: Your Honor, Andy Dietderich. I
14 would like to just respond very briefly to Mr. Shore on two
15 points, if I may. Is that okay, Your Honor?

16 THE COURT: Go ahead.

17 MR. DIETDERICH: Okay. So first, just one
18 observation, importantly. FTX is, if we're correct, a
19 creditor as well. In fact, if we're correct, we're actually
20 the largest creditor in Mr. Shore's constituency and this
21 shouldn't be us versus him. But more importantly, the whole
22 idea that we're struggling for and we're struggling in the
23 dark here from outside because we -- a lot of these
24 conversations we haven't been party to. We're struggling
25 for a way to establish a reserve that doesn't cause undue

1 delay.

2 There will be claims reserves in this case. We
3 have no position on exactly how to fund it in kind or in
4 cash or anything else and we're happy to sit down and work
5 through a reserve that allows immediate distributions of
6 substantially all the value in the case and does so in a way
7 that's consistent with any plan structure that the Debtors
8 and the Committee and Ad Hoc Group take it. I just want to
9 reiterate that. So thank you, Your Honor.

10 THE COURT: All right. Thank you. All right.

11 Anything else that's new from any party?

12 MS. VANLARE: Your Honor, I would just, if I may,
13 just reiterate the point that I think again, we are open to
14 continuing discussions. We're open to continuing, in fact,
15 you know, anticipate doing so, engaging in meet and confers.
16 Our concern is that we want to make sure that we are not
17 left with, you know, a week before confirmation and nothing,
18 no progress has been made.

19 So what is important to us is to be able to
20 maintain the discovery schedule so that we are progressing
21 on that as a backup. In the meantime, we're more than happy
22 to continue to meet and confer to try to narrow issues and
23 so we're fine with doing that, if it means that we adjourn
24 further, so long as we can continue again with -- in the
25 process of the meet and confers and trying to progress on

1 the discovery, that works for us.

2 THE COURT: All right. Thank you. So a couple of
3 parting thoughts. I'm not going to rule on either motion
4 today, but I will give you some further thoughts to expand
5 on our conversation and where we were last time. I -- each
6 party talking here whether it's the Genesis Debtors or the
7 FTX debtors, has things that are near and dear to its heart
8 for purposes of its bankruptcy case.

9 The Debtors here do not want to cede control of
10 their case and the schedule to what happens in another Court
11 and another forum. That's understandable and that's exactly
12 what the stay exists for, right, to protect a Debtor, to
13 allow a Debtor to figure out what's going to happen in its
14 own case without having that all being driven by litigation
15 occurring elsewhere. And so while there's a lot of unusual
16 things about this case, that's a fairly traditional kind of
17 a concern.

18 On the flip side, FTX is understandably concerned
19 about certain issues being litigated outside of its
20 bankruptcy case in Delaware that seem to be most
21 appropriately determined there, whether it's the value of
22 certain kinds of cryptocurrency, FTT, the insolvency of
23 those debtors, and that seems to be a legitimate concern as
24 well. So how that plays out in the context of these motions
25 is yet to be decided. It's clear that the parties have had

1 extensive discussions. I appreciate that.

2 It's clear that there are a lot more -- I can see
3 that by virtue of the amount of additional meat on the bones
4 that is before me today that wasn't before me the last time
5 we got together, whether it's the additional language in the
6 proposed order of the Debtors talking about carving out
7 certain issues to not be determined here; whether it's the
8 Debtors' potential defenses to the claims, their list and
9 exactly how they think that would look in litigation; or
10 whether it's the FTX debtor's list of issues that they have
11 worked through and have thoughts on that goes on for some, I
12 think six pages or so.

13 So for purposes of the estimation motion, I do
14 think there has been progress made. I think there is a
15 loose framework that was walked through by Ms. VanLare and
16 talking about the potential defenses and what she envisions
17 going forward. I think it is not inappropriate for a Debtor
18 to say, Judge, we're willing to go ahead with estimation on
19 certain issues and not others. We recognize that may not be
20 exactly what we want, but we're willing to do that and we'll
21 take the cap that comes out of that.

22 And if regardless of the result there, it would
23 mean that certain things, progress had been made. So I
24 don't think it only works if the claim is somehow reduced,
25 it just works because issues will have been teed up and

1 decided under an estimation rubric. I do think there's more
2 work to be done in talking about Subparagraph A and the
3 value of FTT and what that means or doesn't mean for a list
4 of the potential defenses. You all, I'm not close enough to
5 it to make intelligent determinations or comments.

6 And I can't, as they say, in pool, I can't sort of
7 see the shot. I can't conceptualize what navigating the two
8 competing concerns on that would look like because I just
9 don't know enough. But you all do. And I'm not saying that
10 you can reach a conclusion. Maybe it's irreconcilable. I
11 don't think we're there yet, given that the proposed order
12 was filed yesterday, the letter was filed yesterday. I
13 think there's still discussions to be had about that.

14 I think in the meantime, I think there's no reason
15 to not go ahead with the schedule that's been laid out that
16 gets us up through discovery and talking about the
17 identifying of experts and completing fact discovery. There
18 may be tweaks that somebody wants to propose to it. And
19 because I realize it's been sort of a moving target and
20 we've had a lot of conversations and I'm certainly open to
21 that, but my takeaway would be that it -- discovery should
22 move forward. It should move forward promptly.

23 And as you figure out what needs to be done, you
24 may decide to come up with a tweaked schedule that has
25 additional milestones or deadlines or details on it or that

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1 tweaks a particular deadline here or there. But I don't see
2 any reason why that shouldn't move forward because that
3 discovery, whether we do an estimation hearing or hearing on
4 the merits of something, whether it -- litigation is here,
5 Delaware, anywhere, it all -- it has to be done.

6 So there's really -- I can't see that there's any
7 prejudice by any party to proceed with discovery. If
8 somebody wants to tweak it, you know, you want to talk about
9 it and if there's a discovery dispute, we can have a call
10 and that's fine, but I don't want to micromanage the
11 discovery schedule that I've got. I have it in front of me.
12 Discovery should move forward, period, and if it looks
13 different than the particular deadlines here, you all can --
14 we can have a conversation and figure out what it should
15 look like.

16 As for these issues, particularly the -- so the
17 other issue we talked about is undue delay, and the reserve
18 issues. I think that's another area where work can still be
19 done. The reserve conversations, no doubt, have been going
20 on back and forth. The letter has a particular way it
21 pitches it. There's an additional way it's been pitched
22 here today by Mr. Dietderich and the devil's in the details.

23 It certainly affects the issue of delay. It
24 doesn't resolve the issue of delay. The issue about in-kind
25 distributions and the effect on the reserve is something

1 that I hadn't -- wasn't on my radar screen until today's
2 conversation, so that's why, although argument is very
3 helpful, I -- and I can see the, that it has an impact on a
4 reserve, whether that is something that can be worked
5 around, I don't know. You all will tell me, but that also
6 is a conversation that should be had.

7 So, recognizing the different moving pieces here,
8 parties are clearly communicating well. If there is a point
9 where you think it would be helpful to have somebody who's
10 not involved in the case -- mediate maybe too strong a word,
11 but act as a sounding board for coming up with reasonable
12 paths forward, you can let me know that. I won't -- I'm not
13 going to require that. I'm not mandating it. I'm just
14 throwing it out as yet another option to the extent that I
15 don't know, I'm not in the room where these conversations
16 are happening. So you are all the best judge of what would
17 be most efficient.

18 So turning to the lift stay motion, the lift stay
19 motion does have a -- as filed, certainly has the effect of
20 taking an issue out of the Debtors' case here and saying
21 that the case has to wait for issues to be resolved
22 elsewhere. And frankly, I have no authority nor do I have a
23 desire to micromanage another judge's calendar.

24 That judge will handle that case as that judge
25 sees fit, informed by counsel who are in that case, and it's

1 a road to ruin, I think, to sort of guess what is going to
2 happen, how it's going to be, how things are going to
3 unfold. It's hard enough to figure that out in the cases
4 that are in front of me, much less somebody else's case.

5 And so what I am hearing though is that there are
6 certain issues that the FTX debtors want to have resolved in
7 that case. We've already gone through them and certainly
8 those issues may organically happen, not only with this,
9 with the Genesis Debtors here, but with other parties.

10 I don't have any authority nor has anyone asked me
11 to somehow meddle in the Delaware bankruptcy case on any of
12 that, nor would I. And so if those issues come up, nothing
13 prevents the FTX debtors from addressing those things in the
14 context of its cases. And what I see, at least here for
15 purpose of the estimation motion is an intent even, if it is
16 an imperfect one from the FTX debtor's point of view, to try
17 to avoid having this case interfere with those core issues
18 for the FTX case.

19 Certainly, and so that's one way to sort of
20 obviate or work around the issue of a lift stay where the
21 FTX debtors do what they need to do. They don't have to do
22 it necessarily with these Debtors and Debtors stay away from
23 issues that are near and dear to the heart of the FTX
24 debtors that they may be litigating in other contexts.

25 But right now, unless there's some agreement or

1 ruling that addresses the size of the claim vis-à-vis the
2 importance of it in this case for distribution if for
3 nothing else, it's a gating issue in this case. And so it's
4 hard to lift the stay to allow that to go ahead in the way
5 requested somewhere else and essentially wait here for that
6 to get resolved.

7 So again, I think there's a lot of flexibility
8 that exists here in terms of trying to have each case stay
9 in its own lane and address the issues that need to be
10 addressed. I expect you'll have further conversations. So
11 I'm adjourning the hearing to another date and we can talk
12 about what that is in a minute. And I think that covers
13 everything that I wanted to mention.

14 I'm happy to entertain any questions or comments
15 if anybody has anything they think would be productive at
16 this point.

17 MR. DIETDERICH: So I do have question for
18 clarification, Your Honor. As I understand it, Your Honor
19 is not granting the estimation motion today and we will be
20 commencing discovery -- discovery will continue. Document
21 discovery, I think is proceeding, you know, full speed
22 ahead. We have not commented on the other elements of the
23 litigation schedule with respect to experts and expert
24 reports. A lot of that relates to some of the issues that
25 are still pretty ambiguous in terms of the chart of issues.

1 The -- we'd like to be able to come back and
2 propose something that is sensible in connection with the
3 expert dates in particular. It relates, of course, to the
4 process we have underway in our own case to appoint experts,
5 which is, you know, proceeding, you know, proceeding
6 quickly.

7 THE COURT: All right. Well, I certainly expect
8 the parties will meet and confer about that. That's why I
9 did try to go through the potential defenses and get a sense
10 of what will be in, what will be out. I understand that the
11 concept of what that looked like, there was not an agreement
12 among the parties and that's fine. However, it was further
13 along as I understand it than we were last time we got
14 together and so you all will talk.

15 That will inform what needs to be done. And I'm
16 happy to have a conference at any time to talk about
17 discovery. People can save themselves writing letters. We
18 can just -- I think you've got me plenty educated on these
19 things and you have other things to do than to write me
20 another letter, so I'm happy to make myself available to
21 work through those issues.

22 I think what I'm hearing, Ms. VanLare say and Mr.
23 Shore say is that the case needs to move forward and it
24 can't wait for events in another case. And I think it is
25 moving forward and will move forward, but for discovery, the

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1 devil's in the details so you all can talk, but it's going
2 to be a feedback loop in terms of what you can actually work
3 out in terms of issues that are going to be teed up.

4 And so that's, as you said, there's probably a
5 substantive conversation first about the FTT in particular,
6 that value and how it relates to or doesn't, issues like
7 collateralization and new value. But I'll leave you to have
8 that conversation in the first instance. But the short
9 answer -- just gave you a very long answer. The short
10 answer is yes, I'd be happy to talk to folks about it and we
11 can schedule that now or you can reach out to chambers at an
12 appropriate time.

13 MR. DIETDERICH: Thank you, Your Honor.

14 THE COURT: Ms. VanLare, anything from you?

15 MS. VANLARE: No. No, Your Honor. Thank you very
16 much. Appreciate it. Happy to work with the FTX debtors on
17 the details regarding the schedule, again so long as the
18 general framework is there. You know, whether we move a day
19 here or two that's -- we're actually happy to discuss.

20 THE COURT: All right. And Mr. Shore, anything
21 from you?

22 MR. SHORE: Nothing, Your Honor. Thank you.

23 THE COURT: All right. Anything from any other
24 party?

25 MR. ZIPES: Your Honor, Greg Zipes with the U.S.

1 Trustee's Office. I was waiting until the end of the
2 hearing just to raise some scheduling issues, if possible,
3 with all the parties here. As of now, July 20th is when the
4 disclosure statement is scheduled to be heard and objections
5 are due a week before. That's been moved once already.

6 I'm not going to characterize the disclosure
7 statement and the Court has heard a lot about certain
8 disputes among the parties in this case, but my office has
9 some concerns about the disclosure statement. They're
10 resolvable ultimately, but there's missing information, most
11 obviously, the liquidation analysis and objections and other
12 items in the disclosure statement as well. And just by way
13 of planning, we're wondering if, that deadline is -- well,
14 the deadline is firm for the 13th to respond to the
15 disclosure statement, but it sounds like everything may be
16 adjourned out based on what I heard today.

17 THE COURT: All right. Ms. VanLare, I think
18 that's to you.

19 MS. VANLARE: I'm sure I would take that away, Mr.
20 Zipes, from today's hearing. I think our current plan is to
21 move forward with the disclosure statement hearing on the
22 20th and the corresponding objection deadline, as you noted,
23 is July 13th.

24 THE COURT: So is there more information that's
25 going to be provided, I guess, that would impact objections

1 that may or may not be made if there's additional
2 information provided?

3 MS. VANLARE: Yes. We will be filing the
4 liquidation analysis and the projections in advance of the
5 disclosure statement objection deadline. We may be filing
6 an amended disclosure statement as one typically does as we
7 incorporate comments that we receive and we're certainly
8 happy to continue working productively with Mr. Zipes and
9 his office to resolve any and all concerns that he has
10 regarding the adequacy of the information.

11 THE COURT: All right. I guess my thought is I'll
12 leave it to you in the first instance to have a
13 conversation, but obviously some of the information that was
14 just mentioned in terms of additional information that's
15 going to be provided and its relationship to the objection
16 deadline so as to obviate the need to file objections.

17 So I understand it may come eventually, but having
18 a slew of objections and then having the information arrive
19 is less ideal than the information, obviate the need to file
20 an objection. So I'll let you all talk and work that out.

21 Mr. Zipes, anything else?

22 MR. ZIPES: No, Your Honor. Thank you.

23 THE COURT: All right. All right, so Ms. VanLare,
24 since we are here, I just want to make sure I have an
25 understanding of next dates. I just wanted to -- give me a

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1 second to just pull out my list. So right now, we do have a
2 disclosure statement hearing scheduled for the 20th. Is --
3 I assume there's nothing between now and then that we have
4 on the calendar?

5 MS. VANLARE: That's (audio drops).

6 THE COURT: All right. And I'm assuming that if
7 there's a need to talk about discovery, you'll reach out
8 unless you want me to schedule something now. Any
9 preference?

10 MS. VANLARE: I think that I'm hopeful that we can
11 avoid the need for an additional status conference on
12 discovery issues. So my preference would be to wait and see
13 and then reach out to chambers if we need one.

14 THE COURT: All right. All right, and so I think
15 the next date we have after that is August 15th, which is
16 listed as the estimation motion and I'm -- or at one point
17 it was and I think that the schedule that is coming out of -
18 - will come out of today's conversations and -- is really
19 what's going to govern all that and so that's -- I'm looking
20 at Docket 479 which was filed on the 5th, Page 15 of 15
21 which is the schedule, so I'm not going to pay too much
22 attention to other dates that may have been identified vis-
23 à-vis the estimation motion. And I want to make sure that
24 I'm not missing something in understanding it that way.

25 MS. VANLARE: No, Your Honor, that -- so the

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1 confirmation hearing right now is scheduled for August 24th.
2 And so our hope is that the estimation hearing would precede
3 that. We weren't sure of Your Honor's schedule. We
4 obviously did shift some of the deadlines, so -- but our
5 hope would be that the estimation hearing precedes
6 confirmation.

7 THE COURT: Well, right now according to this
8 schedule, we've got a deadline for submissions and replies
9 on August 18th. And if the idea is to have a resolution of
10 the estimation issues, which I don't even know what they are
11 yet -- I have an idea what they might be and the range. The
12 24th is looking awfully optimistic. So -- and also like the
13 15th was originally the date for the estimation and the 15th
14 doesn't sort of work with the revised deadline.

15 So my understanding was that these deadlines were
16 sort of likely to slip, but were sort of a framework, so my
17 sense would be that we probably would be looking at
18 something more likely in the beginning of September and that
19 what -- we'd have to talk sometime maybe July 20th about
20 more details about what an estimation hearing would look
21 like and when it would be. That was kind of where I was
22 thinking we'd end up. Is that your thoughts?

23 MS. VANLARE: I think that is an excellent
24 suggestion, Your Honor. I think we would like to again
25 preserve the possibility that we would have the estimation

1 precede confirmation. I think as Your Honor noted, I think
2 we'll have more definition of the issues and, you know,
3 we'll have a chance to have additional conversations as to
4 whether estimation is a day, for example, daylong hearing,
5 two days. I don't think it will be more than that. And so
6 what I would propose, which is really what you proposed,
7 Your Honor, is that we come back to that issue on July 20th
8 and then we can figure out a date for the estimation
9 hearing.

10 THE COURT: All right. All right, that's fine,
11 and my thought would be that we're probably likely to move
12 the confirmation hearing date anyway, because at least, pick
13 a date that holds out the hope that it's decided before
14 confirmation. And if it's not, it's not, but unless we move
15 that date, I think the handwriting is on the wall in terms
16 of that. So I just mention that just because I don't want
17 people thinking that the 24th is likely to go forward on
18 that day because I just don't -- I don't think that really
19 fits.

20 Again, my thought would be to schedule something
21 early in September. And again, we'll have to see what the
22 estimation procedures look like, what the actual hearing
23 would look like, and what the substance is in terms of
24 determining whether it could be done before confirmation.
25 But at the same time, pick a date for confirmation where we

1 sort of stagger these things and see how it all goes.

2 But I only mention that now just because I want to
3 make sure to get you the dates that you need so that would
4 be my thought for September. And if you want to reach out
5 to Ms. Ebanks to do that, that's fine or I can throw some
6 dates out or you could think about what you're looking at
7 and call later and that's fine. But I just want to make
8 sure that you have dates that seem -- for what you need that
9 seem likely to be the dates.

10 MR. DIETDERICH: Your Honor, just -- Andy
11 Dietderich for FTX. Again, it depends wildly on what the
12 subject matter is of the estimation motion. To the extent
13 it's really the guts of an adversary proceeding, that
14 schedule would be, you know, wholly inappropriate and also
15 kind of inappropriate to delay the case to resolve the
16 merits of that, when there could be a reserve. To the
17 extent --

18 THE COURT: Well --

19 MR. DIETDERICH: -- it's an estimation proceeding
20 --

21 THE COURT: I --

22 MR. DIETDERICH: -- narrow the gap of the reserve
23 --

24 THE COURT: I understand. We're not there yet.

25 My only reason for mentioning is that I think August 24th is

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1 unlikely to work. And so that's -- I'm not advocating for a
2 particular schedule. There's a lot of conversations that
3 need to happen. All I'm advocating for is that the work
4 that's been done in discovery continue without delay so that
5 we keep all of our options open and then we'll have another
6 conversation July 20th and see where we are.

7 MR. DIETDERICH: Understood. Thank you.

8 THE COURT: So my intent is not to delve into
9 that. It's not a today problem other than to say, I think
10 August 24th is probably under any view of the world, yours
11 or Ms. Vanlare's, unlikely to work. So, but we'll talk
12 about it all on July 20th and with that, unless anybody has
13 anything else to add?

14 So here's what I'm going to do is I'll carry the
15 motions to July 20th, so that they're -- we've had a lot of
16 discussions at this point. My intent is to not repeat these
17 conversations. You all got me up to speed. I've talked
18 quite a bit about my views about it so that you have an idea
19 of where I am and so we'll keep them on the calendar for
20 purposes of processing additional information that we
21 receive and how that affects the -- where we're trying to
22 get to and everybody's rights.

23 But, so I'll put them on the calendar for the
24 20th, understanding that we're not here for a full-blown
25 argument on them and at a certain point, if the parties can

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1 reach certain agreements, great. If they can't, at a
2 certain point, I've got to make a ruling, a formal ruling.
3 I'll do that. But they're -- I'll consider them submitted
4 as of today, subject to folks providing me with additional
5 information about all the issues we talked about today.

6 So, all right. Thank you very much.

7 MS. VANLARE: Thank you.

8 (Whereupon these proceedings were concluded at
9 3:39 PM)

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1 **I N D E X**

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3 **RULINGS**

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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Sonya M. Ledanski Hyde

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8 Sonya Ledanski Hyde

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